(9)

Supreme Court, U.S.
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No. 00-957

In The

Supreme Court of the United States

STATE OF KANSAS,

Petitioner,

v.

MICHAEL T. CRANE,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Kansas

JOINT APPENDIX

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RELEVANT DOCKET ENTRIES

97C16409 DATE: 06/30/98
CARE AND TREATMENT OF CRANE MICHAEL T

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12/12/97 12/11/97 – PETITION (60) SEXUAL PREDATOR: ATTACHMENT AND MOTION FOR PROBABLE CAUSE HEARING FILED.

12/12/97 12/12/97 – (KH) PLF, STATE OF KANSAS APPEARS BY S. TOTH AND B. CAMERON; DEF. MICHAEL CRANE APPEARS BY JOHN DONHAM; DEF. MOTION TO CONTINUE PROBABLE CAUSE HEARING SUSTAINED PER RECORD; HEARING SET 1/28/98, 2:30 P.M. (CSR) MELANIE JONES JUDGE P. RUDDICK

* * *

02/02/98 01/28/98 – (SK) STATE APPEARS BY SCOTT TOTH AND BRENDA CAMERON. DEFENDANT'S MOTION TO PROHIBIT DISCLOSURE AND CLOSE HEARING DENIED DEFENDANT'S MOTION TO DISMISS DENIED (LACK OF PERSONAL SERVICE). DEFENDANT'S MOTION FOR SUMMARY JUDMENT (DEFENDANT ALREADY PAROLED) IS UNDER ADVISEMENT PENDING FILING OF BRIEFS. DEFENDANT'S MOTION TO DISMISS (DOUBLE JEOPARDY AND EX POST FACTO) DENIED. DEFENDANT'S MOTION TO BAR USE OF PRIOR CONVICTIONS DUE TO RES JUDICATA FINDING OF INTENT DENIED. STATE PRESENTS EVIDENCE AND RESTS. DEFENDANT PRESENTS NO EVIDENCE. TRIAL SET MAR 30, 1998 FOR 5 DAYS. MOTIONS

SET MARCH 4, 1998 AT 11:30 A.M. (CSR) MT JUDGE RUDDICK

02/06/98 02/04/98 – (BW) MOTION TO PROHIBIT DISCLOSURE OF PRIOR CRIMINAL CONVICTIONS

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02/17/98 02/12/98 – (BW) MOTION FOR SUMMARY JUDGMENT . . . MOTION FOR REASONS FOR DECISIONS

02/20/98 02/18/98 – (LK) STATE'S RESPONSE TO RESPONDENT'S MOTION TO PROHIBIT DISCLOSURE OF PRIOR CRIMINAL CONVICTIONS . . . STATE'S RESPONSE TO RESPONDENT'S MOTION TO ALLOW INDIVIDUAL VOIR DIRE . . . STATE'S RESPONSE TO RESPONDENT'S DEMANT [sic] FOR CONFIDENTIALITY . . . STATE'S RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

02/26/98 02/24/98 – (LK) * 812 *
MOTION TO DISMISS ON CONSTITUTIONAL GROUNDS . . . NOTICE OF HEARING 3-26-98 AT 10:30

03/02/98 02/25/98 – (SK) STATE OF KANSAS APPEARS BY COUNSEL, SCOTT TOTH AND BRENDA CAMERON DEFENDANT CRANE APPEARS BY COUNSEL, JOHN DONHAM. MR. CRANE'S PERSONAL APPEARANCE IS WAIVED DEFENDANTS MOTION TO DENY TESTIMONY UNDER ADVISEMENT. DEFENDANT'S MOTION TO LIMIT (DIAGNOSIS BY OTHERS) IS UNDER ADVISEMENT. DEFENDANTS MOTION TO LIMIT (OPINION AS TO RE-OFFENSE) IS DENIED. DEFENDANT'S MOTION TO LIMIT (KSA

60-457) IS UNDER ADVISEMENT PENDING DISCOVERY PER RECORD. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT DENIED PER RECORD. DEFENDANT'S MOTION TO PROHIBIT DISCLOSURE OF CONVICTIONS IS DENIED. DEFENDANT'S OBJECTION TO FEE AND EXPENSE CAPS DENIED, IN PART, PER RECORD. DEFENDANT'S MOTION FOR INDIVIDUAL VOIR DIRE IS DENIED. NEXT HEARING SET MARCH 26, 1998 AT 10:30 A.M. (CSR) MJ JUDGE RUDDICK

* * *

03/16/98 03/09/98 – (BW) MOTION FOR SUMMARY JUDGMENT

* * *

03/27/98 03/24/98 – (LK) STATE'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS ON CONSTITUTIONAL GROUNDS . . . NOTICE OF HEARING 3-26-98 AT 10:30 CERT. OF DELIVERY

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03/30/98 03/25/98 – (LK) STATE'S RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT . . . NOTICE OF HEARING 3-26-98 AT 10:30, CERTIFICATE OF DELIVERY

03/30/98 03/26/98 – (SK) STATE APPEARS BY COUNSEL, SCOTT TOTH, MICHAEL CRANE APPEARS IN PERSON AND WITH COUNSEL, BRENDA CAMERON AND JOHN DUNHAM [sic]. CONTINUANCE GRANTED AT DEFENDANT'S REQUEST. NEXT HEARING MAY 13, 1998 AT 3:00 P.M. TRIAL DATE

CONTINUED AT DEFENDANT'S MOTION. TENTATIVE TRIAL DATE IS JULY 13, 1998 AT 8:30 A.M. JUDGE RUDDICK

* * *

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* * *

07/15/98 FILE STAMP 07/13/98, MICR #00932, MOTION TO DENY EVIDENCE OF NON-SEXUAL CRIMES. . . . MOTION FOR SUMMARY JUDGMENT (NON-QUALIFYING DISORDER)

* * *

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* * *

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* * *

10/18/99 FILE STAMP 10/12/99, FILM DATE 10/12/99 MICR #11, ORDER (COURT FINDS THAT MICHAEL CRANE SHOULD BE CONSIDERED A SEXUALLY VIOLENT PREDATOR & CONTINUE TO BE COMMITTED TO THE CUSTODY OF THE SEC. OF SOCIAL AND REHABILITATION SERVICES)

* * *

10/04/00 FILE STAMP 10/03/00, FILM DATE 10/03/00 MICR #595, MANDATE FROM COURT OF APPEALS FILED/ REVERSED AND REMANDED (C/S TO JUDGE RUDDICK)

* * *

CIVIL ACTION

IN THE DISTRICT COURT FOR THE
TENTH JUDICIAL DISTRICT OF KANSAS
JOHNSON COUNTY, KANSAS

State of Kansas	)	
	)	
Plaintiff-Appellant	)	Case No. 97C16409
vs	)	Appellate Ct.
	)	No. 98-82080-A
Michael Crane	)	
	)	
Defendant-Appellee	)	

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CIVIL ACTION

IN THE DISTRICT COURT FOR THE TENTH JUDICIAL DISTRICT OF KANSAS JOHNSON COUNTY, KANSAS

Case No. 97C16409
Appellate Ct. No. 98-82080-A

[Caption Omitted In Printing]

REPORT TO COURT OF EVALUATION PURSUANT TO K.S.A. 59-29a01, ET SEQ.
(SEXUAL PREDATOR ACT)

CRANE, Michael Todd
#34,862 DC (97-C-16409) **March 2, 1998**

Michael Todd Crane was admitted to State Security Hospital on February 4, 1998, by order of the District Court of Johnson County. He was to be evaluated as to whether he is a sexually violent predator as defined in the Sexual Predator Act (K.S.A. 59-29a01, et seq.).

ASSESSMENT PROCEDURES UTILIZED

Data Sources for this evaluation included interview information, observation of behaviors, and review of State Security Hospital medical records inclusive of court papers and numerous other documents sent by the Kansas Department of Corrections, as well as a Clinical Services Report for Commitment Review Committee (prepared December 10, 1997).

CURRENT CASE INFORMATION

One criterion necessary to qualify as a sexually violent predator is that the person "has been convicted of or charged with a sexually violent offense." Mr. Crane meets that criterion as he stands convicted of Aggravated Sexual Battery in case number 93-CR-28 and Lewd and Lascivious Behavior (a misdemeanor).

According to the Clinical Services Report, these offenses took the following form:

> In 1993, Mr. Crane was sentenced to 35 years to life for Kidnapping, Attempted Aggravated Sodomy, Attempted Rape, and Lewd and Lascivious Behavior (misdemeanor). The Kansas Supreme Court reversed these felony charges in July, 1996, leaving the Lewd and Lascivious Behavior as a misdemeanor. Johnson County then refiled charges, and Mr. Crane subsequently pled guilty to Aggravated Sexual Battery and was given a 3 to 10 year sentence. The victim in his Lewd and Lascivious Behavior conviction was an adult female employee at a tanning salon. The offending behavior consisted of exposing himself to this woman. The Aggravated Sexual Battery conviction was associated with a female employee of a video store. Mr. Crane had apparently carried the victim to the back of the store, told her to engage in fellatio, and threatened to rape her.

CRIMINAL HISTORY INCLUDING OTHER SEX OFFENSES

The following is a composite listing obtained from reports from various law enforcement agencies:

- In 1979, Mr. Crane was convicted of Trespassing.
- In August of 1980, he was arrested for Third Degree Property Damage, but no final disposition was indicated.
- In September of 1981, he was arrested for Second Degree Burglary and sentenced to one year in the county jail.
- In 1983, he was arrested for Burglary in Atchison, Kansas, given a one to five years sentence that was suspended, and he was placed on probation for three years.
- In 1983, he was convicted of Resisting Police.
- In September of 1984, he was charged with Felony Theft.
- In January of 1985, he was convicted on three counts of Felony Theft in Wyandotte County, Kansas.
- In February of 1985, he was charged with Indecent Exposure. His 21-year-old female victim observed him masturbating.
- In January of 1986, he was charged with the theft of construction forms and other materials. This case was not prosecuted.
- In October of 1986, he was charged with Sexual Assault in Blue Springs, Missouri. In this case, he pushed his 27-year-old female victim into her car, pushed his hand against her face, and said, "You know what I want." He began stroking her thighs and crotch, but the victim's 3-year-old son (who was in the car) began crying, evidently distracting Mr. Crane until he said, "This is crazy – I've been

drinking. I'm not going to hurt you. I [sic] going to leave you and you won't see me again." He left the vehicle and ran away.

- In December of 1986, he was charged in Jackson County, Missouri, Circuit Court with one count of Felony Attempted Forcible Rape and two counts of Felony Sexual Abuse in the First Degree for offenses committed on October 16, 1986, and December 12, 1986. In the latter offense, he grabbed his 28-year-old victim from the front by her arms, forced her to the ground, laid on top of her, and tore her sweater while trying to fondle her breasts. For some reason unknown to the victim, Mr. Crane suddenly got up and fled the scene. Approximately twenty-four minutes after the offense, Mr. Crane was arrested. He informed officers that he did not know why he had pulled into the parking lot, but that he "saw this lady, she got out of her car. All I intended to do was just scare her. I didn't intend to hurt anybody. That's all, I wasn't going to rape her." He further told officers that he had used a "camouflage hat" as a mask. He admitted touching the victim, said that he was alone during the assault, and that the victim yelled. He said that he didn't know beforehand that he was going to grab her, but "just played a mind game". He admitted playing this kind of "game" before, but evaded a question as to how many times, saying, "Never to where I grabbed or hurt somebody." One day later, at the time of his admission to Two Rivers Hospital, he claimed a lack of memory for any of these events. After plea negotiations, Mr. Crane

was convicted on two counts of Sexual Abuse in the First Degree.

- In February of 1988, he was charged with Indecent Exposure in Independence, Missouri. His female victim said that she was driving out of a parking lot when she observed Mr. Crane masturbating in a parked pickup while the driver's door was open. When Mr. Crane was stopped for a "good car check" a short time later, he denied any awareness of the offense and he was released after the victim could not be contacted to provide identification.
- In October of 1988, he was charged with Assault in the Third Degree in Grandview, Missouri. At 10:20 a.m., Mr. Crane's 21-year-old victim was riding her bicycle on a bike trial when he lunged toward her from the front, knocking her off of her bicycle. He pushed her head against the ground and said, "Shut up!", and attempted to cover her mouth with her hand. When another biker approached, the victim yelled and Mr. Crane ran to his vehicle and drove away at a high rate of speed.
- In June of 1989, he was charged with Interference with Lawful Arrest. He was released on bond and was later charged with Failure to Appear.
- In September of 1989, he was charged in Blue Springs, Missouri, with Battery, which was later amended to Assault in the Third Degree. He had approached his estranged wife during a class reunion at a lounge because he was upset at seeing her with two other males. An argument ensued and he

prevented her from leaving by striking her in the face and knocking her to the ground. When one of the other men objected, Mr. Crane attempted to start a fight with him, but was restrained by a lounge employee.

- In May of 1990, he was charged in Blue Springs, Missouri, with Failure to Comply with General Duties of an Owner of an Animal. (The police report noted that Mr. Crane had been convicted of the same offense several times during the previous six years.)

- In February of 1991, Mr. Crane was charged in Blue Springs, Missouri, with Abuse of a Child. Mr. Crane's estranged wife reported that he had taken her 3-year-old son (with permission), but had returned him to her with a bruised face and broken blood vessel in the right eye.

- In August of 1992, he was charged with Indecent Exposure in Independence, Missouri. At about 4:10 p.m., his female victim, a probation officer, appeared at the police department to report that she had observed Mr. Crane, who she knew as a parolee, exposing himself in a parking lot. Mr. Crane did not recognize her at first, but when she approached and he saw who she was, he said, "Oh shit!", and left the parking garage.

These accounts of Mr. Crane's aggression toward women appear not always to have been adjudicated as fact.

TREATMENT

A cautionary comment by Dr. Wagih Silwance, a forensic psychiatrist at Western Missouri Mental Health Center, stated that Mr. Crane "presents a likelihood of repeating the same acts unless changes in his personality structure took place".

While incarcerated, Mr. Crane completed thirty hours of group therapy in 1995. The treatment summary indicated that he was an active group participant, but he excluded discussions of his sexual and criminal behavior. Mr. Crane has never participated in sex offender treatment.

PSYCHIATRIC EXAMINATION

On admission, Mr. Crane expressed concerns about the patient/physician confidentiality. He was advised that his evaluation would not be confidential, but would result in a report to the court, with copies to his attorney and the district attorney. He was advised that his medical records would be reviewed and important information would be included in the report. He voluntarily gave pertinent information about himself as well as the circumstances leading to his convictions and incarceration.

Mr. Crane reported that in 1993 he was at State Security Hospital for an evaluation, after which he was convicted of Kidnapping, Attempted Rape, and Sodomy. He was sent to Lansing Correctional Facility. After appealing the convictions, Mr. Crane accepted a plea bargain from Johnson County and pled guilty to Aggravated Sexual Battery. He was paroled in early January,

1998, and after six days, he was ordered to State Security Hospital for a sexual predator evaluation.

Mr. Crane further reported that he has been intermittently exposing himself since age 16. He exposed himself to strangers in parking lots of shopping centers. His exhibitionism allegedly became less frequent as he became older.

Throughout the evaluation course of Mr. Crane, he did not show evidence of overt psychosis nor affective symptoms.

On formal mental status examination, Mr. Crane presents as a polite and cooperative individual, who is neat and attentive to his personal hygiene, and appearing his stated age of 36. His mood is neutral. His affect is appropriate. Although he is pleasant and friendly, he appears ill-at-ease. His speech is clear. His responses are logical and organized. He expressed remorse for his deviant sexual behavior. Likewise, he is quite concerned for the embarrassment that he caused his family. He reports having gained a new perspective on life and considers his prison experience as a motivating factor toward his rehabilitation. His immediate recall and memory for both recent and remote events are intact. His sensorium is clear as he is oriented to time, place, person, and situation. He is articulate and his level of functioning is assessed to be average. His abstract reasoning ability is intact. He is not preoccupied with delusions. Hallucinatory behavior is not evident. He is able to verbalize some insight into his behavior; however, he seems to minimize the seriousness of his illegal behavior. He denies suicidal and homicidal ideations.

DIAGNOSIS

Upon review of all available data, it is the opinion of these examiners that Mr. Crane meets the Diagnostic and Statistical Manual of Mental Disorders – Fourth Edition (DSM-IV) criteria for Exhibitionism and Antisocial Personality Disorder.

OPINION

Under the Sexual Predator Act, to-wit: K.S.A. 59-29a01, et seq., "sexually violent predator" is legally defined as "any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in the predatory acts of sexual violence".

According to the documents forwarded to these examiners, Mr. Crane meets the criterion regarding having been convicted of a sexually violent offense. These convictions have been discussed in the section "Current Case Information" above.

According to K.S.A. 59-29a01, et seq., "mental abnormality" means "a congenital or acquired condition affecting the emotional or volitional capacity in a degree constituting such a person a menace to the health and safety of others". It is the opinion of the evaluating staff that Mr. Crane possesses a mental abnormality, Antisocial Personality Disorder, which would account for his aggression toward women. In Antisocial Personality Disorder, there is a pervasive pattern of disregard for and violation of the rights of others, impulsivity, irritability,

and aggressiveness, along with a lack of remorse as indicated by rationalizing having hurt/mistreated others. This aggression has been sexual in that it has proceeded progressively from his exhibitionistic behavior.

If the "sexual offenses" listed above in the Criminal History section are true, Mr. Crane is then considered to be a sexually violent predator. If that information is not true and we are left to consider only the offense described in the Current Case Information section above, Mr. Crane then does not meet the criterion of a sexually violent predator.

CONSIDERATION/RECOMMENDATIONS

It is understood by the staff that should legal authorities (prosecution, courts, jury, etc.) find that Mr. Crane is not a sexually violent predator, he will be released into open society on parole status. Since it is assumed that some risk for reoffense remains, it is important that Mr. Crane adhere to a strict parole plan. Besides usual parole stipulations, he should be required to participate in outpatient therapy with a therapist who is knowledgeable of sex offenders, sex offender treatment, and relapse prevention. His therapist and parole officer should keep in close contact to attempt to assure that Mr. Crane is complying with parole stipulations and his relapse prevention plan.

/s/ Ken Eaves
Ken Eaves, M.S., LMLP
Psychologist

/s/ [Illegible]
Leonardo B. Mabugat, M.D.
Psychiatrist

CIVIL ACTION

IN THE DISTRICT COURT FOR THE
TENTH JUDICIAL DISTRICT OF KANSAS
JOHNSON COUNTY, KANSAS

Case No. 97C16409
Appellate Ct. No. 98-82080-A

[Caption Omitted In Printing]

* * *

[412] THE COURT: I think we're ready. Is there anything else before we bring the jury in?

MR. TOTH: No, sir.

MR. DONHAM: No.

THE COURT: All right. Thank you.

(Whereupon, the following proceedings were had in the presence and hearing of the jury:)

THE COURT: Call your next witness.

MR. TOTH: Thank you, Your Honor.

ROBERT HUERTER,

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TOTH:

Q. Would you state your name, please.

A. Robert Huerter.

Q. Mr. Huerter, what is your occupation?

A. I'm a licensed master's level psychologist.

[413] Q. Who are you employed by?

A. Larned State Security Hospital in Larned, Kansas.

Q. What is Larned State Security Hospital?

A. It's a maximum security psychiatric facility that serves all 105 counties of the state for people who are referred for care and treatment and/or evaluation from all of the counties of the state.

Q. Okay. What is a licensed master's level psychologist?

A. It's an individual with a master's degree in a psychology-related area who has been recognized by the Kansas Behavioral Scientist Regulatory Board to practice psychology within an institutional setting, a mental health setting, or to work for a medical doctor.

Q. All right.

MR. DONHAM: Judge, I'm sorry, I'm going to ask the witness to speak up slightly. I'm having a little difficulty hearing.

THE COURT: All right. Can you try to speak up for us?

THE WITNESS: Okay.

Q. (By Mr. Toth) Mr. Huerter, how long have you been a licensed master's level psychologist for the State of Kansas?

[414] A. Since 1989.

Q. And have you been employed full time since 1989 with the Larned State Security Hospital?

A. Yes, I have.

Q. Okay. Would you explain to the jury, please, your educational background?

A. Okay. I have a bachelor's degree from Emporia State University which I got in 1970 and a master's degree from Pittsburg State University which I received in 1975.

Q. Because of your designation, licensed master's level psychologist, does the Kansas Behavioral Science Regulatory Board authorize you to make diagnosis regarding a patient's psychological profile?

A. I'm entitled to administer and interpret psychological tests, and the State of Kansas through the hospital has given me the clinical privilege of making diagnoses or making diagnostic impressions, yes.

Q. Okay. Can you still try to speak up a little bit more?

A. Sorry.

Q. Does this license that you hold not only provide you the ability to legally give out diagnosis, but [415] can you also engage in treatment if you chose to go to that avenue?

A. Yes, I can, within the hospital setting. I cannot do that independently.

Q. Okay. Mr. Huerter, presently which unit of Larned State Hospital are you assigned to?

A. I'm on East 2 Ward, which is an evaluation unit.

Q. What happens at an evaluation unit?

A. A – we receive people from the different counties across the state and evaluate them in reference to issues of competency to stand trial. We do sanity evaluations, presentence evaluations.

Q. You've been a psychologist for how long, how many years?

A. Twenty-three.

Q. Okay. And do you keep current in the literature in the area of psychology?

A. Make an effort to, yes.

Q. Okay. Are you the member of any professional organizations involved in the area of psychology?

A. I'm a member of the North American Master's Level Psychologist Association.

Q. Okay. Any others?

A. That's all.

Q. All right. Have you ever testified, Mr. Huerter, [416] as an expert in the area of making a psychological diagnosis of an individual before?

A. Yes, I have.

Q. Okay. Where have you testified at?

A. In this very courthouse and in many of the counties across the state.

Q. Approximately how many times have you testified as an expert with regard to your findings of a diagnosis that you've made?

A. Oh, probably five or six times a year.

Q. Okay. Over the course of the many years you've been a psychologist?

A. Yes.

Q. Are you familiar, Mr. Huerter, with what – I'm going to call it a M'Naghten evaluation. Are you familiar with what that is when I say a M'Naghten evaluation?

A. Yes, I am.

Q. Would you tell the jury what a M'Naghten evaluation is?

A. Okay. A M'Naghten evaluation is an assessment of an individual's mental state at s me point in the past to determine if, No. 1, it's at the time of an alleged criminal offense, if – to determine if, No. 1, the individual was experiencing some [417] type of defect of reason due to disease of the mind; in other words, a major mental illness so as to have rendered them, No. 2, unable to differentiate the difference between right and wrong, or if so, if they could differentiate between right and wrong, to be unable to assess the nature and quality of their behaviors.

Q. Okay. So – and I have heard that referred to as an insanity evaluation before. Would that be kind of along those same lines?

A. Yes. It is a specific type of sanity evaluation. It's a standard that Kansas uses.

Q. Okay. And have you performed M'Naghten evaluations in the past?

A. Yes, I have.

Q. Approximately how many do you believe?

A. Oh, maybe 15, 20 a year.

Q. All right. How is an evaluation like that conducted?

A. Okay. Since you are reconstructing a psychological profile of somebody at some point in the past, you want all records that you can get, previous police reports, a person's psychiatric records, all police reports describing the crime, any witness statements, any victim statements, [418] anything that would add some credence to that individual's state of mind at the time of this alleged criminal offense.

You go through this stuff, all this data. You then interview and you psychologically test the individual, and after you have these data, you go through to determine, as I mentioned earlier, if in fact you felt the person had a major mental illness, in other words, a disease of the mind, and if they did, were they unable to differentiate between right and wrong, or were they able to assess the quality of their behavior.

And if they were unable to – if they possessed the major mental illness and they were unable to differentiate between right and wrong, you report that they were a positive M'Naghten and thus perhaps subject to being acquitted by reason of insanity.

Q. Okay. Does the evaluation also generally include a personal interview of the subject?

A. Yes, it does.

Q. Okay. And do you administer testing as well?

A. Yes, I do.

Q. All right. And are you familiar with – is the testing that you do in a M'Naghten evaluation [419] generally accepted in your field as reliable?

A. Yes, it is.

Q. Okay. Did you conduct a M'Naghten evaluation on Michael Crane back in 1993?

A. Yes, I did.

Q. Okay. Is this Mr. Crane seated over here to my right?

A. Yes, it is.

Q. All right. Do you remember Mr. Crane?

A. Yes, I do.

Q. All right. Are you aware that at the time that you saw Mr. Crane he had been charged in Johnson County District Court with a kidnapping and attempted rape and attempted sodomy?

A. I believe those were the charges. I know he had felony charges similar to that.

Q. All right. And at the time that – at the time that you saw Mr. Crane, that case was still pending, correct?

A. Yes.

Q. All right. He would have been sent to you for determination by you as to whether or not he was insane at the time he committed the offense, correct?

A. Yes, he was.

[420] Q. All right. Did you try to assimilate Mr. Crane's prior criminal history as best you could?

A. Yes, I did. I should mention this is a team effort. The social worker is in part responsible for contacting other social agencies, so the social worker accumulates much of this information. Then I go through that data.

Q. Okay. And that data you go through with the proposed patient, correct?

A. Yes, I do.

Q. All right. Do you also or did you in this case have a personal interview with Mr. Crane about this offense?

A. Yes, I – on a number of occasions.

Q. Okay. What type of tests did you administer to Mr. Crane?

A. I gave Mr. Crane a Minnesota Multiphasic Personality Inventory, a Millon Clinical Multiaxial Inventory, a Bender Motor Gestalt, a memory for designs test, a Wechsler Adult Intelligence Test. Those were the formal tests that I administered, had administered.

Q. And you're familiar with how to administer those tests?

A. Yes, I am.

[421] Q. And you had administered those tests on a number of occasions prior to administering them to Mr. Crane?

A. Yes, I have.

Q. And would the purpose of those tests be to help you determine whether or not there was any sort of organic brain dysfunction?

A. Yes.

Q. Okay. Are you aware that Mr. Crane had claimed that he was in a blackout state at the time that he committed the offense in the Leawood Movie Exchange?

A. Yes.

Q. Okay. Would you describe your interaction with Mr. Crane, please?

A. Okay. As I mentioned, I did interview him on several – on numerous occasions. My office is actually located on the ward, so Mr. Crane had access to my office area. On a number of occasions, he made an effort to initiate contact with me by coming to my office to knock on the door to ask to speak with me, to let me know that he wanted to explain his side of the story and to get going with the evaluation to convince me of his – of what was going on with him, of his [422] problems, to basically let his side be known.

Q. What did he tell you was his side of it he wanted to reinforce to you was – what was going on with him?

A. Primarily that he was in a blackout state, and that he had no recollection of the events for which he was currently charged.

Q. Okay. How – how many times did Mr. Crane reemphasize that with you?

A. Probably two or three times a week.

Q. Okay. How would you characterize Mr. Crane?

A. Well, it got to be rather bothersome after a while. Usually I'm the one who initiates the contact with the patients. I tell them that if they're experiencing acute emotional distress on their day-to-day living there on the ward, to come and see me. Otherwise, I'll let them know when I'm ready for the testing and the interviewing process.

Q. Okay. Was that the way with Mr. Crane?

A. He wasn't – he was concerned and anxious more so about his legal situation than anything that was occurring on the ward.

Q. I see. Did you interview Mr. Crane about the incident in 1993, then, over the course of your [423] contact with him?

A. Yes, I did.

Q. Okay. Can you tell us what Mr. Crane advised you about that?

A. He was able to provide a fairly logical and sequential account of his activities before and after the event and actually even during the time period, saying that he didn't remember this himself, but having been

told and having read police reports, and from what his attorney had told him or whatever information he gathered elsewhere, he had a pretty good account of what he supposedly did, although he stated he could not consciously remember the actual actions which resulted in the legal charges.

Q. Okay. But did he provide to you a fairly detailed account of what happened?

A. Yes, he did.

Q. All right. And would that be inconsistent with an individual who was suffering from blackouts?

A. Individuals who are experiencing blackouts, sometimes there is a – they may have a very logical sort of an account as to what's going on around them up to a point in which they do black out, and then at such point as they do tune in [424] again, there's this period of loss in which obviously they do not remember what has gone on. So it wasn't totally out of character for someone who may have had some type of a blackout state.

Q. Okay. Did you provide – do testing – you said you did a number of tests on Mr. Crane to help try to get a better feel as to whether or not something had happened at the time the offense occurred, correct?

A. Yes.

Q. All right. Did any of your testing indicate that?

A. No, it did not.

Q. Okay. So based on your interview with Mr. Crane, and combined with the testing that you did with

Mr. Crane, did you reach some sort of conclusion as to whether or not in your opinion Mr. Crane was in any sort of blackout state at the time that this offense occurred?

A. Yes, I did.

Q. And what was that opinion?

A. In view of his previous criminal record, his previous psychiatric record, the test results, my interviews with him, I was of the impression quite strongly that he was not in a blackout state during the time of the alleged criminal offenses.

[425] Q. Okay. During your interview with Mr. Crane – just one or two final points – did you talk to him about his prior incidents of sexually impulsive behavior?

A. Yes, I did.

Q. Okay. Did he give you a logical explanation as to why he committed those acts in the past?

A. I know at one point I'd asked him about it, and he kind of passed it off to youthful indiscretion and peer pressure and seemingly was using that as an excuse as to why he did some of the things that he had done and been arrested for.

Q. Okay. The opinion that you reached regarding Mr. Crane, was that shared by the other members of your team that worked on this case?

A. Yes, it was.

Q. Okay.

MR. TOTH: Nothing further.

THE COURT: Mr. Donham, cross?

CROSS-EXAMINATION

BY MR. DONHAM:

Q. Mr. Huerter, if I understand your diagnosis of Mr. Crane back in 1993, then, you found that he did not have any type of mental disorder that would have affected his ability to understand what [426] he was doing?

A. Correct.

Q. Now, you also said that you conducted a personal interview of Mr. Crane. Is there some reason why you wanted to have a personal interview of him?

A. It's just part of my – the standard procedure for which I reach my conclusions.

Q. Couldn't you have just done that by reading other documentation and medical reports?

A. I do that as part of a preface in most cases so that I do have a good background and a good grasp as to what the person's historical psychological dynamics may be, but I need to question the person so as to rule in or rule out – there are certain questions that will arise by which you want – certainly want to give the person the benefit of the doubt as to whether they were or were not experiencing a lack of mental state.

Q. So you think that his allegations that he didn't understand what he was doing at the time was just some excuse that he was throwing up in an attempt to avoid prosecution?

A. That coupled with his history of antisocial behaviors, his criminal record, his previous evaluation in which he'd been given – he'd been [427] previously evaluated for sanity in the past and had not been seen as legally insane develops a pattern of sorts consistent with that of an antisocial individual, yes.

Q. Antisocial individual, that being one of like 3 percent of the general male population in the United States?

A. I can't give you the exact percentage, but I could probably check for you.

Q. I believe it's in the DSM-IV under Antisocial Personality Disorder. Page 648.

A. Okay. Prevalence. Estimates within the clinical setting are varied from 3 to 30 percent depending upon the predominant characteristics of the population being sampled.

Q. There is nothing particularly unusual about somebody with an antipersonality – excuse me, antisocial personality disorder, is there?

A. Not –

MR. TOTH: Your Honor, I'm going to – I'm sorry to interrupt, Mr. Donham. May we approach just a second, Judge?

THE COURT: Sure. Come on up.

* * *

CIVIL ACTION

IN THE DISTRICT COURT FOR THE
TENTH JUDICIAL DISTRICT OF KANSAS
JOHNSON COUNTY, KANSAS

Case No. 97C16409
Appellate Ct. No. 98-82080-A

[Caption Omitted In Printing]

[430] DIRECT EXAMINATION

BY MR. TOTH:

Q. Would you state your name, please.

A. Leonardo Mabugat.

Q. You are a medical doctor, correct, sir?

A. That's correct.

Q. Doctor Mabugat, what is your present occupation?

A. My specialty in the field of medicine is psychiatry.

Q. All right. Where are you employed at?

A. I'm currently employed at the Larned State Security Hospital.

Q. What is the Larned State Security Hospital?

A. It is a state facility responsible for doing evaluation and/or treatment of patients sent there by the court.

Q. All right. You are a psychiatrist, correct?

A. That's correct.

Q. Doctor Mabugat, would you tell the jury your educational background, please?

A. After finishing my undergraduate courses of Bachelor of Arts, major in pre-medical course, and Bachelor of Science in psychology, I went into medical education proper. After completing my one year of rotating internship at the V. Luna General [431] Hospital –

Q. Where's that at?

A. It is located in Quezon City, Philippines.

Q. You are –

A. I graduate –

Q. I'm sorry. You are originally from the Philippines, Dr. Mabugat?

A. Yes, I am.

Q. So you started your rotating internship at the V. Luna Hospital in Quezon City?

A. Quezon city, that's correct.

Q. After that what did you do?

A. After finishing my rotating internship, I graduated with a degree of Doctor of Medicine from the University of Santo Tomas in Manila, Philippines.

Q. Okay.

A. After –

Q. I'm sorry. I'm just going to let you go ahead.

A. After graduating from medicine, I reviewed for six months in preparation for the board examination

there. After six months of review and preparation, I underwent one and a half years of training, residency training in general practice, which is a requirement for all physicians [432] undergoing training in our country before they go into different fields of specialty in the field of medicine. So after completing a year and a half of residency training in general practice, I underwent training in internal medicine, and I finished the training in internal medicine in the Philippines in 1972.

Q. Okay.

A. A few months after I finished my training in 1972, I went to the United States. I worked as staff physician in charge of acute medical unit in Essex Center in Cedar Grove, New Jersey. After my tour of duty there, I went to Binghamton Psychiatric Center. I was a primary care physician there in charge of acute and chronic geriatric medical cases.

After that, I underwent formal training in the field of psychiatry at Yale University School of Medicine residency training in psychiatry in three hospitals in Connecticut; namely, Fairfield Hills Hospital in Newtown, Connecticut, Connecticut Valley Hospital in Middletown, Connecticut, and Dana Psychiatric Clinic in New Haven, Connecticut.

Q. How long did you – how long was your specialized [433] psychiatric training at Yale law – Yale Medical School?

A. I was there for three years. And following my training in the field of psychiatry, I underwent three subspecialty training or fellowship training also in the

field of psychiatry. My first fellowship training was in crisis intervention psychiatry, commonly known as community psychiatry. I took that at New York Medical College in Valhalla, New York.

After finishing that, I went and got certified for having training for six months in electro-compulsive treatment dealing with depressed patients at that time. Following that, I underwent training in my second fellowship, also with the New York Medical College. I finished geriatric psychology.

After finishing that fellowship, I went into my third fellowship training in Albert Einstein College of Medicine, Yeshiva University in Bronx, New York. I did my biological psychiatry and psychopharmacology fellowship training. At that time I was involved in research, and during that year period of time I had one paper published.

[434] Q. Anything after that?

A. After finishing my fellowship training, I went to Ohio and served as a staff psychiatrist at Massillon Psychiatric Center for almost six years. While there, I was involved in doing assessment and treatment of patients in the administration unit, continuing treatment unit, intensive psychiatric care unit dealing with patients with dual diagnoses as well as patients sent to us for evaluation by the court within the counties of the hospital in Ohio. After about six years of there, I went to Larned State Security Hospital, and I've been there for the past three years.

Q. And what exactly is you duties at Larned State Security Hospital?

A. We are evaluating and treating patients who are referred there by the court.

Q. Are you a licensed psychiatrist in the state of Kansas?

A. I am. Yes, I am.

Q. How many other states are you a licensed psychiatrist in?

A. Previously in Connecticut, and then when I came to New York – in Ohio I was also licensed there, and currently with the state of Kansas.

[435] Q. All right. Doctor Mabugat, I take it from your extensive history that you are very interested in the field of psychiatry.

A. I am, that's correct.

Q. Do you keep current in the literature in the field of psychiatry?

A. Yes, I do.

Q. Okay. Do you belong to any professional associations in the area of psychiatry?

A. Currently I only belong to the Larned State Hospital, state security hospital medical staff association.

Q. Okay. Have you ever testified in court before as an expert in the area of making a diagnosis of a patient that you've seen?

A. Yes.

Q. Approximately how many times have you testified, Dr. Mabugat, regarding your diagnosis?

A. Offhand I cannot really tell you the number, but I have had more than enough. I've had a lot of court hearing cases.

Q. I would assume that over the course of your training and experience you have probably seen thousands of patients; is that correct?

A. That's correct.

[436] Q. Made thousands of diagnoses regarding those patients?

A. That's correct.

Q. Okay. Are you familiar, Dr. Mabugat, in the – in your field of expertise with sexual disorders?

A. Yes, I am.

Q. Are you familiar with nonsexual mental disorders?

A. Yes, I am.

Q. Okay. Are you familiar with the term sexual predator?

A. Yes, I am.

Q. Are you familiar with the Kansas statute regarding sexual predators?

A. Yes, I am.

Q. Okay. Have you as part of your job duties and descriptions conducted evaluations on individuals specifically for the purpose of determining whether or not in your professional opinion they are a sexual predator according to the Kansas statute?

A. I have, yes, I have.

Q. Do you know how many you've done?

A. Sexual predator evaluation?

Q. Yeah.

A. Up to the present time, I've done about ten.

[437] Q. Okay.

A. But since February I've done six.

Q. All right.

A. Up to February, I'm sorry. Up to February of 1998, I've done six, and up to the present time I've done ten.

Q. All right. When an individual is referred to your facility for an evaluation, that referral generally comes after the court has already had a probable cause hearing on the matter, correct?

A. That's correct.

Q. And it is your job to look at the patient, do your evaluation, and then make a recommendation one way or the other as to whether or not you think that person meets the criteria, correct?

A. That's correct.

Q. Have there been occasions when you have looked at an individual and decided that they do not meet the criteria?

A. Yes.

Q. Okay. And there have been occasions when you've decided that the individual does meet the criteria?

A. Yes.

Q. Do you know what the percentage is on the [438] evaluations you've done on those you've recommended that are versus those you've recommended are not?

A. Well, up to February of '98, I said I had six, and one of the six we found to be a sexual predator. Up to the current time of ten, I have not found any of the four additional patients that we've evaluated.

Q. To be a sexual predator?

A. No. None has been.

Q. Okay. So out of the ten that you've done, are you saying that only one person you've recommended, or in your professional opinion, is a sexual predator?

A. Yes.

Q. Okay. Are you familiar with Michael Crane?

A. Yes, I am.

Q. Is this Mr. Crane seated over here?

A. Yes, it is.

Q. Would Mr. Crane be that person that you're referring to?

A. Yes, he is.

Q. When Mr. Crane was referred to your facility, did you conduct a personal interview with him?

A. Yes, I did.

[439] Q. Did you also review the criminal history provided to you regarding Mr. Crane?

A. Yes, I did.

Q. Okay. Did you also review various documents provided to you from the Department of Corrections and various police reports and things of that sort?

A. Yes.

Q. Had you also looked at an evaluation that was performed by Robert Huerter on Mr. Crane back in 1994?

A. Yes, I have.

Q. Was there other information that you looked at that I have not already enumerated, Dr. Mabugat?

A. No.

Q. Are you familiar with what the DSM-IV is?

A. Yes, I am.

Q. Okay. What does DSM stand for?

A. Diagnostic and Statistical Manual for Mental Disorders.

Q. Can you tell me what that is?

A. It is a book that we psychiatrists use as reference in order to have a uniform diagnosis of cases.

Q. Okay. Would it be fair to say that that's – it's [440] generally accepted in your field to be the bible of your work?

A. Yes.

Q. Okay. It's a red book?

A. Yes.

Q. You have had one in front of you?

A. Yes, I have.

Q. Okay. Are you very familiar with the DSM-IV?

A. Yes, I am.

Q. Do you use it on a day-to-day basis to help you in making diagnosis of certain types of mental disorders?

A. Yes.

Q. Okay. Did you use the DSM-IV in helping you arrive at your diagnosis regarding Mr. Crane?

A. Yes, I have.

Q. Okay. Might I first – do you have a copy of the Kansas Sexual Predator Statute, Dr. Mabugat?

A. Yes, I have.

Q. Would you pull that out, please? Can I go over that with you real quick?

A. Sure.

Q. All right. There are certain elements that must be met for a person to be considered a sexual predator, correct?

[441] A. That's correct.

Q. Okay. And the first element is that the person must have been convicted of or charged with a sexually violent offense, correct?

A. That's correct.

Q. Okay. And in Mr. Crane's case, you became aware that he had pled guilty to the crime of aggravated sexual battery in 1997, correct?

A. Yes, that's correct.

Q. And by statute that's one of the listed enumerated sexually violent offenses, correct?

A. Yes.

Q. So after we get through that part, then I suppose we're going to get into your field. The statute says, been convicted or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility, correct?

A. Correct.

Q. Okay. Let's go ahead and run through the latter part of that definition. Let's talk about, first of all, mental abnormality or personality disorder. Based on your expert opinion and your [442] contacts with Mr. Crane, do you have an opinion as to whether or not Mr. Crane suffers from a mental abnormality or personality disorder?

A. Yes.

Q. Okay. And what is that opinion?

A. He suffers from personality disorder.

Q. Okay. What is the name of the personality disorder he suffers from?

A. Antisocial personality disorder.

Q. Would you define for us what an antisocial personality disorder is?

A. It is a pervasive pattern of disregard for and violation of the right of others, the rights of others, usually starting from late childhood during adolescent age and continuing up to adulthood.

Q. Okay. Is an antisocial – does the DSM-IV list certain criteria that you are to look for in helping you determine whether or not a person suffers from an antisocial personality disorder?

A. Yes.

Q. Okay. How many criteria does the DSM-IV list regarding that?

A. We have a definition here of a pervasive pattern of disregard for and violation of the rights of [443] others, and three out of the seven enumerated items on the list here for which I considered, failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are –

THE COURT: Doctor, can you slow down, make sure the jury can hear you?

THE WITNESS: Okay.

A. Out of the seven items that needs to be satisfied, only three, at least three, is required.

Q. (By Mr. Toth) Okay.

A. And of the three, I chose No. 1, No. 3, and No. 4.

Q. Okay.

A. Number 1 states failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest.

Q. Okay.

A. Number 3 is impulsivity or failure to plan ahead. Number 4, irritability and aggressiveness as indicated by repeated physical fights or – and/or assaults.

Q. Okay. Are there other criteria listed under the antisocial personality disorder that Mr. Crane might also fit under that you just chose not to [444] include in your finding of the three out of the seven?

A. What I am certain of are the three criteria that satisfies describing Mr. Crane. The other four, I don't think there are enough evidence or supporting factors for those four.

Q. But there may be evidence of them, but you don't find them significant enough?

A. That's right.

Q. All right. The antisocial personality disorder that Mr. Crane suffers from was one of the things you listed in your report as meeting the criteria under the sexual predator statute, correct?

A. That's correct.

Q. Does he also suffer from another mental abnormality that you identified?

A. Yes.

Q. What is that?

A. Exhibitionism.

Q. What is exhibitionism?

A. Exhibitionism is intense recurring, sexually arousing fantasy, sexual urges, or behaviors involving exposure of one's genitals to an unsuspecting stranger.

Q. So would it be fair to say from reading your [445] evaluation and talking with you before, the two major mental disorders Mr. Crane suffers from are exhibitionism and an antisocial personality disorder?

A. That's correct.

Q. All right. Now, continuing on in the legal definition, it says charged or convicted of a sexually violent offense, suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

I'd like to talk about this last portion of the definition. Does the mental abnormality and antisocial personality disorder that Mr. Crane has in your professional opinion make him likely to engage in predatory acts of sexual violence if not confined in a secure facility?

A. Yes.

Q. And the statute defines "predatory" as acts directed towards strangers or individuals with whom relationships have been established or promoted for the primary purpose of victimization?

A. That's correct.

Q. Okay. So in your professional opinion, this [446] mental abnormality and personality disorder Mr. Crane has makes him likely to re-offend if not kept in a secure place, correct?

A. Yes, that's correct.

Q. Can you tell us why you believe that?

A. Well, because there is a pattern of behavior that he has been exhibiting for a long period of time.

Q. Okay. And you're looking a lot at his criminal history, right?

A. Yes.

Q. Would it be fair to say that most psychiatrists generally agree that the best predictor of future behavior is past behavior?

A. That's correct, yes.

Q. And in Mr. Crane's case, has that always borne itself out?

A. Yes.

Q. Can you explain in your professional opinion, what is the predominant mental disorder that Mr. Crane is suffering from? Because he is clearly – he's had exhibitionism, he's just flashed, but he's also gone the next step

and actually physically attacked. What is – can you tell us in your opinion what is going on with Mr. Crane?

A. Well, I gave a diagnosis of exhibitionism because [447] it satisfies the – giving that diagnosis, but I would say that both diagnoses are in order here according to my opinion.

Exhibitionism although generally will not require perpetrator to do farther [sic] sexual activity with a victim, the antisocial personality disorder would. So I would say that where exhibitionism ends, antisocial personality disorder begins.

Q. I see. And is [sic] in Mr. Crane's case, because of his past history and what you know about him through all the testing and things of that sort, if he is not kept in a locked secure facility, at this point in time it's your opinion that he's likely to go out and re-offend, correct?

A. That's correct.

Q. Okay. Is it a situation in your professional opinion that Mr. Crane can't control his behavior, or won't control his behavior, or a combination thereof? Or what's your opinion regarding that?

A. I think it's a combination thereof. I said that in my deposition that he cannot control his behavior because he frequently places himself in such a situation that he cannot get away from doing what he did, and he just won't control or do [448] anything to control his behavior as well.

Q. Okay. He's not psychotic, correct?

A. He's not.

Q. Okay. He's not delusional as far as you can tell?

A. He's not.

Q. Okay. But his mental abnormality or personality disorder drives him to do the things that he does, correct?

A. That's correct.

Q. And he won't control it?

A. That's right.

Q. Okay. Were you able to determine whether or not Mr. Crane has any insight as to why he sexually offends?

A. No.

Q. Does that mean that he doesn't have any insight, or you weren't able to determine that?

A. I was not able to determine whether he has or not.

MR. TOTH: Okay. Thank you, Dr. Mabugat.

THE COURT: Mr. Donham, do you want to get started? You want to take a break now? What's your preference? I assume you have substantial cross.

MR. DONHAM: Judge, I can tell you I'm [449] probably going to be talking with Dr. Mabugat for at least an hour.

THE COURT: Why don't we go ahead and take a break of about 15 minutes. Remember the admonition not to discuss the case during the break.

(A break was taken.)

THE COURT: Doctor, you want to come take the stand? Mr. Donham.

MR. DONHAM: Thank you, Judge.

CROSS-EXAMINATION

BY MR. DONHAM:

Q. Doctor Mabugat, you and I have met about this event before, have we not?

A. Yes, we have.

Q. In fact, both you and I and Mr. Eaves and Mr. Scott Toth, we met down at Larned State Hospital on July 9th of this year to discuss this, did we not?

A. Yes.

Q. At that time you underwent what is called a deposition where you gave testimony under oath.

A. Yes.

Q. And your testimony under oath was transcribed by a court reporter into what's called a transcript of

* * *

[456] get to whether there's a difference in the testimony. But let me ask you to rephrase the question.

MR. DONHAM: Thank you, Judge.

Q. (By Mr. Donham) Doctor Mabugat, you didn't rely on the testimony of any of the victims in order to reach your findings, did you?

A. No.

Q. Now, in preparing your evaluation on Mr. Crane, did you have a formal personal interview with him?

A. Yes.

Q. Did you think that was necessary to have a formal personal interview?

A. Yes.

Q. One of the goals of – or I should say one of the purposes for your evaluation is to determine his mental status now, isn't it?

A. Yes.

Q. You relied, I take it, on medical reports that you may have had from back in 1993, didn't you?

A. I'm sorry? Excuse me?

Q. Did you rely on medical evidence that you had in your files, evidence that was put together back in 1993?

A. Yes.

[457] Q. But you still wanted to interview him personally in order to see what he was like today?

A. Yes.

Q. In your professional opinion, do you think that your evaluation of him could have been conducted without a personal interview?

A. No.

Q. Now, in your interview of Mr. Crane and your observations of his behavior, you found that he did not suffer from any kind of psychosis?

A. That's correct.

Q. And a psychosis I believe is a disturbance of a person's communication, thought process, and perception, isn't it?

A. That's correct.

Q. You found, I believe, in your diagnosis that he suffered from two and only two disorders, that being exhibitionism and antisocial personality disorder, correct?

A. That's correct.

Q. And you and I discussed how one went about making that decision of antipersonality – excuse me, antisocial personality disorder by following the guidelines of your DSM-IV handbook?

A. Yes.

[458] Q. And I believe you testified that in that criteria for determining if a person had an antisocial personality disorder, that of the seven things that one might look for, you found Mr. Crane satisfied three of them?

A. That's correct.

Q. In fact, that's the minimum number of things that a person can satisfy in order to quality for an antisocial personality disorder, correct?

A. That's correct.

Q. We went through those things, the first one being the failure to conform to social norms with respect

to lawful behaviors, as indicated by repeatedly performing acts that are grounds for arrest. Do you remember us going through that?

A. Yes.

Q. Do you recall we talked about things such as a person who frequently steals? You recall that?

A. No.

Q. Do you recall us discussing the difference between – or rather the notion that a person who repeatedly shoplifts might or might not suffer from kleptomania?

A. That's correct.

Q. We distinguished, did we not, between the [459] difference – or the difference between someone who repeatedly commits acts of unlawful behavior but does not suffer from a disorder that attacks their volitional control, didn't we?

A. Yes, we did.

Q. In fact, you stated under oath at that time that the fact that a person has an antisocial personality disorder does not necessarily mean that their volitional control is so impaired that they cannot control their behavior. Correct?

A. Correct.

Q. More importantly, when we discussed Mr. Crane specifically, when asked if you felt that his commission of

sex offenses was – whether he couldn't control his behavior or whether he just didn't care about people, you chose the latter, didn't you?

A. Yes.

Q. And it's still your opinion today that Michael Crane committed those sex offenses out of clear choice.

A. I said that before, yes.

Q. Well, I understand you said it before, Doctor, but –

A. Yes.

[460] Q. – these people weren't here.

A. Yes.

Q. The jury wasn't here when you and I talked about this, so please forgive me if we go over what seems like plowed ground again.

So we're perfectly clear, Dr. Mabugat, the information that you had at your disposal at the time of your evaluation of Michael Crane the spring of this year included what kind of documents?

A. As I said during my deposition, we reviewed his past medical records that we have in our hospital, we reviewed the police record that was sent to us that we reviewed, and the affidavit as mentioned earlier, and the evaluations made previously by the other evaluators.

Q. You had, I believe, reports prepared by psychologists and psychiatrists from the Larned staff in 1993, correct?

A. That's correct.

Q. You had the reports prepared by psychiatrists and psychologists at a state-sponsored facility called the Kansas Reception and Diagnostic Center in Topeka?

A. Yes.

* * *

[463] then?

A. I don't know.

Q. On the day you did your evaluation, had he had any treatment?

A. No.

Q. You testified earlier about your opinion as to Mr. Crane's likelihood to re-offend.

A. Yes.

Q. Is that likelihood to re-offend based upon his past?

A. The pattern of behavior that he has.

Q. Okay. What do you have or what can you point to in the DSM-IV manual that would substantiate your claim that he is likely to re-offend in the future?

A. The pervasive and repetitive act, unlawful acts.

Q. Well, I know you're just restating what you just said, he's done it before. What, do you think a person can't change?

A. Oh, yes.

Q. In interviewing Mr. Crane, did you determine if he had ever served any time in prison for any sexual offenses?

A. Yes.

Q. When?

[464]A. From 1993 to January of 1998.

Q. Okay. That being the case that brought him – the most recent case, when he got out of prison he was sent to your place?

A. That's right.

Q. Any other incarceration prior to that?

A. Not recent – not after – no.

Q. Are you familiar with the goal of the Department of Corrections here in the state of Kansas as being to maximize rehabilitation of a person while they're in prison?

A. Yes.

Q. Do you think that the Department of Corrections – let me strike that.

Do you think having Mr. Crane sit in prison for five years was some form of rehabilitation?

MR. TOTH: I'm going to object to that question, Your Honor. It's beyond the scope, and relevance.

MR. DONHAM: Judge, if I may, I –

THE COURT: Overruled.

MR. DONHAM: Thank you, Judge. And just for the record, we issued a subpoena for Dr. Mabugat as well and for just this purpose, so [465] that I could go beyond the scope. I can recall him, but I know he wants to get back to Larned, so –

THE COURT: Well, let's see where we go here, but that objection's overruled.

MR. DONHAM: Thank you, Judge.

Q. (By Mr. Donham) Do you see any purpose rehabilitation-wise as a psychiatrist in just letting someone sit in prison for five years?

A. No.

Q. You do treatment at Larned; is that correct?

A. Not with sexual offenders, but we do give treatment there.

Q. You do treatment of people with an antisocial personality disorder, though, right?

A. Yes.

Q. And you do treatment on people who have a mental disorder of exhibitionism?

A. Yes.

Q. But are you testifying that if Michael Crane were committed, that you wouldn't do treatment for him?

A. We would if we are equipped with treatment that he really needs, such as Sex Offender Treatment Program. We don't have that at Larned State Security Hospital.

[466] Q. Mm-hmm. So where do the people like Mr. Crane go if they don't go to the Larned State Hospital?

MR. TOTH: I'm going to ask to rephrase the question because that assumes either he is not found to be a predator or he is, Your Honor. It may be confusing.

MR. DONHAM: I can rephrase the question, Judge.

THE COURT: Very well.

Q. (By Mr. Donham) Doctor Mabugat, the people who are currently in the system who have been found to be sexual predators, are they under the care of people like yourself at the Larned State Hospital?

A. No.

Q. Where are they?

A. They are in the Department of Corrections.

Q. So they're more or less back in prison?

A. Yes.

Q. The building they're at, as I understand it, it's a building surrounded by high walls with coiled razor wire.

A. High wires, not walls.

Q. A fence?

A. Fence. That's correct.

Q. A fence, and it has the coiled razor wire?

[467] A. Yes.

Q. And I think it even has gun towers on the corners, does it not?

A. That's correct.

Q. Now, you treat people with antisocial personality disorder and exhibitionism. Where are your patients located?

MR. TOTH: I'm going to object and ask to approach, Your Honor.

THE COURT: All right. Come on up.

(The following proceedings were had at the bench by Court and counsel out of the hearing of the jury:)

MR. TOTH: I do apologize for keep [sic] interrupting because I hate to do that, Judge, but we are now completely getting away from the issue, and now we're talking about the treatment as opposed to whether or not Mr. Crane is a sexual predator.

And I'm not objecting on a scope basis, but I can't see this as being relevant because the statute doesn't provide for alternative methods of treatment. They have to find that he's a predator or not, and what happens after that is subject to the statute.

[468] MR. DONHAM: What they have to find is whether or not he needs to be committed for treatment. I think they need to understand what are we talking about treatment. Treatment's an issue. That's why we're here.

MR. TOTH: I mean, treatment may be an issue, but where he gets treatment is not an issue, and under what methods he gets treatment is not an issue.

THE COURT: Well, where were we? We were at gun towers, right?

MR. DONHAM: Actually, we were if they put the people with these two disorders that are called sexual predators in gun towers, where do they put the people with the same disorders that aren't considered sexual predators. Just asking where his patients are located.

MR. TOTH: He – he has no personal knowledge of the sex offender treatment program for the sexual predators, Judge, and that's what I'm objecting to. Doctor Mabugat's practice is limited to the evaluation phase of it over at the state security hospital. Where the predators are housed is over at the state prison hospital, which is on the other side of the road. It's run by [469] Department of Corrections and not by S.R.S. It's a completely different ball of wax.

MR. DONHAM: I'm asking him about his patients. I'm not asking him about someplace that doesn't do treatment. I want to ask this expert about – we're going to talk about what kind of treatment can you do. That's all. What kind of treatment – where are his patients, and how does he treat them.

THE COURT: Well, I think you can inquire of him what kind of treatment is appropriate, but I'm not sure I do understand any relevance to people being treated outside of this –

MR. DONHAM: It's – I'm sorry.

THE COURT: – outside the scope of the sexual predator facility.

MR. DONHAM: Well, we raised an issue that the sexual predator proceeding is punitive in nature, and this witness can lend support to our allegations about the fact that people with identical medical disorders are segregated.

Those that have been found to be sexual predators are kept in a prison setting while those who just have the same disabilities are kept in a [470] more comfortable surrounding.

MR. TOTH: Judge, that's an issue for a habeas proceeding or something. It has nothing to do with the merits of the case.

THE COURT: Yeah. Again, I'll give you some leeway about what kind of treatment he would receive or should receive, but I don't see any relevance to some differentiation between him and somebody else with similar disorders.

In other words, you know, I'll give you some leeway on whether or not, if he's found a sexual predator, he'll get treatment and what kind of treatment he'd get. I think that's a fair area of inquiry. But what this doctor does with people who haven't been found to be sexual predators is not relevant.

MR. DONHAM: Well, I think it is if he can testify that he knows for a fact the treatment being given sexual predators is a far cry from the ones given to people that aren't. For instance – and I'd like to make a proffer at this time.

I think he would testify as he did in the deposition that the people who are not incarcerated in the prison

setting have much freer lifestyle. They are treated as involuntarily [471] civilly committed people, and that they can be treated chemically, which is his specialty. They can be treated chemically, and once they have stabilized, they are free to roam around in the general population.

Sexual predators, on the other hand, apparently, according to Dr. Mabugat, don't get the chemical treatment. They are just sitting out there and certainly sharing their feelings, petting the dog, and waiting for their lives to expire. It's – I think it's an issue that goes to is there treatment being provided or not.

And I think we're entitled to get into it, because again, you're asking this jury to commit him for treatment when there may well be other avenues available for treatment.

THE COURT: Are you saying this goes to the possibility that there's treatment which would make him less likely to re-offend even though not confined in a secure facility?

MR. DONHAM: That's a very real possibility.

MR. TOTH: How can he do that, Judge, if Mr. Crane's not going to be a court commitment from somebody that's been ordered by the court to [472] go to Larned State Hospital? The only people that can treat at Larned State Hospital at that facility are people in Department of Corrections custody that are flipping out, freaking out while they're in prison, and they're shoved over to Larned.

Mr. Crane is not eligible for treatment at that facility by the mere fact that he has finished his sentence with the Department of Corrections. That's the problem.

THE COURT: Well, I think you both know more about what – the doctor's answers than I do because I haven't read his deposition. I think respondent can get into evidence generally, what kind of treatment he would receive if confined, if determined to be a sexual predator. And if there is evidence that there are available treatments which would render him unlikely to re-offend even if not confined, that would be relevant evidence.

I don't think it's relevant, however, what sort of treatment folks are receiving who aren't in one of those two categories. So you know, maybe you can – I don't know if you could rephrase and kind of go that direction. In other words, treatment that other people are receiving [473] at Larned, I agree, is not relevant. But I think you can inquire about alternatives to confinement as a sexual predator.

MR. DONHAM: Well, that gets away from the entire thrust of our – of this particular portion, so I'd just like to have our objection noted. We'll move on to a different topic.

THE COURT: Very well.

(Thereupon, the following proceedings continued in the hearing of the jury:)

Q. (By Mr. Donham) Doctor Mabugat, you expressed an opinion earlier about the likelihood of Mr. Crane re-offending, and you said that you felt that he was likely to re-offend.

A. Yes.

Q. How comfortable are you with the statement that you feel he's likely to re-offend?

A. I am comfortable with that statement.

Q. Would you be willing to put a percentage on that?

A. No.

Q. Okay. Would you be willing to say that you feel beyond a reasonable doubt he'll re-offend?

A. Yes.

Q. Do you think he'll re-offend beyond a reasonable doubt?

[474] A. Likely. More likely.

Q. Do you think – I guess I don't understand. You're saying that you can't say that he'll re-offend beyond a reasonable doubt, but you can say that it's likely that he'll re-offend? Is that right?

A. Yes.

Q. At your deposition, page 44, you seemed a little hesitant to give a percentage. I think the answer you gave me then was that if you were forced to giving a percentage you would say 51 to 49. Is that correct?

A. Yes. More than 50 percent.

Q. The antisocial personality disorder, person tends to grow out of that as they get older, don't they?

A. The – yes. The signs and symptoms gradually diminish. This is what the book says.

Q. Isn't it true that as a person enters their 40s, that statistically you can expect to see antisocial personality disorder decline?

A. Gradually, yes.

Q. Okay. And I'm sorry, not 40s, as he enters into his 30s, excuse me. That would be his fourth decade, right?

A. Yes.

[475] Q. Zero to ten years of age would be his first decade?

A. Yes.

Q. Ten to 20, 20 to 30, once he gets in his 30s he begins to lose that antisocial personality trait; is that correct?

A. Not lose, but it will gradually diminish at that decade.

Q. All right. Mr. Crane's, what, 37 years old now?

A. 36? 37, yes.

Q. 36? And in 1993 when the evaluation was done, he would have been, what, 30, 31 years of age?

A. Yes.

Q. And that's the information that you used to form your opinion; is that correct?

A. Yes.

Q. But he's much older now, isn't he?

A. Yes, he is.

Q. Did you run any additional tests on him this time?

A. No.

Q. Would you be willing to say, then, that maybe your 51 to 49 percent likely is starting to maybe slide back towards 49 to 51?

MR. TOTH: I'm going to object at this point. I think that's a mischaracterization of [476] the doctor's testimony regarding the percent.

THE COURT: Overruled.

Q. (By Mr. Donham) You can answer.

A. I would still say that in all likelihood the rate of re-offense would be more than 50 percent, and I said 51 to 49 will tip the balance.

Q. Sure. And that's based on him in 1993, though. Am I right?

A. Until the present time, I would say so.

Q. Okay. Well, you based primarily your conclusion that he is antisocial based upon his criminal history that goes back to, what, 1988?

A. Yes.

Q. Well, all I'm asking you is, is it possible that now that five or six years have gone by since you established your 51 to 49 balance, Michael Crane here has grown out of that enough to where you could no longer make that statement?

A. There's a possibility. You're asking for possibility.

* * *

[490] 15.

MR. DONHAM: Okay. I'm sorry, Judge, I'm probably wandering. No doubt it's a compound question.

Q. (By Mr. Donham) If you would also agree that in order to say here today as an expert witness that conduct disorder requires a showing of this repetitive and persistent pattern of behavior, if you can't tell us what he did, you can't say that, can you?

A. I just said I can't remember, but I read about that.

Q. Okay. I'd just like to close with – I'd like to reask you one more time: Mr. Crane's disorders do not affect his volitional control to the degree that he cannot control his behavior, do they?

A. Yes.

Q. When you say that, you're agreeing with my statement?

A. Yes.

MR. DONHAM: Thank you. Judge, I don't have any further questions at this time.

THE COURT: Redirect?

MR. TOTH: Thank you, Your Honor.

REDIRECT EXAMINATION

[491] BY MR. TOTH:

Q. Doctor Mabugat, you're familiar with the statute, we've already established that, correct?

A. That's correct.

Q. All right. And isn't it true that under the interpretation of the statute, in a literal reading of the statute, a person does not have to lose their volitional control in order for a person to be a potential sexual predator?

A. That [sic] correct.

Q. Okay. The statute's very clear that there are two types of psychological disorders that it addresses; a mental abnormality which the statute defines as a congenital condition affecting a person's volitional capacity which predisposes them to commit acts of sexual violence. You're familiar with that, correct?

A. Yes.

Q. What would be an example of a mental abnormality that would fall under that definition?

A. Antisocial personality disorder.

Q. Okay. So in your opinion, antisocial personality disorder qualifies also as a mental abnormality?

A. Yes.

[492] Q. Okay. And then the statute clarifies. It says, convicted of a crime and suffers from a mental abnormality or –

A. Or –

Q. – personality disorder, correct?

A. Yes.

Q. And antisocial personality disorder clearly is a personality disorder?

A. That's correct.

Q. And there is no requirement in the statute that a personality disorder be of the type where it affects a person's volitional or emotional capacity?

A. That's correct.

Q. So do you see a distinction there between the statute that says mental abnormality or personality disorder, or do you run the two together?

A. There's a distinction.

Q. Okay. Would exhibitionism be a mental abnormality potentially, or would it be a personality disorder?

A. It is a sexual disorder per se.

Q. Okay. You are not of the opinion, then, Doctor, that a person needs to be psychotic or delusional [493] or insane when they commit a crime in order for a person to qualify as a predator if the other criteria are met?

A. Yes.

Q. Okay. A person can understand what they're doing and be in a position of controlling it and still be a sexual predator if they suffer from an antisocial personality disorder?

A. Yes.

Q. Okay. Let me clean up just a few things, and then we'll get you out of here. I don't want to mischaracterize your position regarding the likelihood of Mr. Crane re-offending, because you testified at a deposition, you testified here today, and as I understand it your testimony is that in your professional opinion there is a likelihood that Mr. Crane will re-offend beyond a reasonable doubt unless confined in a secure facility, correct?

A. Correct.

Q. Okay. You're not saying he's going to re-offend beyond a reasonable doubt?

A. That's right.

Q. You're saying there's a likelihood he'll re-offend –

[494] A. Yes.

Q. – beyond a reasonable doubt. And isn't it true that's what this statute requires you to find?

A. Yes.

Q. Okay. I mean, you can only go off of certain things like what he's done in the past and what he said and things of that sort, correct?

A. Correct.

Q. All right. I mean, you can't predict with a, you know, a hundred percent certainty on issues like this, right?

A. No. Definitely not.

Q. Okay. But you have been doing this for many, many years?

A. Yes. I have.

Q. And let me address this issue about conversations you may have had with Ken Eaves. Is it my understanding, Doctor, that at the time – well, originally Ken Eaves was working with Mr. Crane, correct?

A. Yes.

Q. And then he consulted with you, and then you also did an interview with Mr. Crane?

A. Yes.

Q. Okay. And at the time you and Mr. Eaves or at [495] least Mr. Eaves made his initial determination as to whether or not Mr. Crane may be a predator or not, you did not have all of Mr. Crane's criminal history, correct?

A. That's correct. This is what I was saying earlier.

Q. Right. And how important is criminal history to you in making this determination?

A. The pattern of behavior that he has been exhibiting for a long period of time.

Q. Okay. You knew, did you not, that Mr. Crane did have a history of exhibitionism?

A. Yes.

Q. But you were not aware of the fact that Mr. Crane also has a substantial history of physically attacking women, or at least you didn't at that time, correct?

A. That's correct.

Q. All right. And when you found that out, that was the thing that clearly made you make this determination?

A. Yes.

Q. And you've only made this determination in one out of ten cases that you've ever done?

A. That's correct.

[496] Q. Okay. And you think it was the presentence investigation that I sent you later that may have tipped you off that there was more information you needed?

A. Yes.

Q. Okay. Do you specifically remember seeing information about physical attacks before I sent you the presentence investigation?

A. No.

Q. Okay. If you did see it, you certainly don't remember it, right?

Q. Oh. Oh, and the same deal with this conduct disorder requirement. For a person to have antisocial personality disorder, you've got seven criteria. The person has to be at least 18 and have some symptoms of conduct disorder, which means basically that they did some bad things before they were the age of 15, right?

A. Yes.

Q. And you don't specifically recall what instances Mr. Crane had of conduct disorder, but you do recall that there were some instances that made you feel comfortable that there was that history there?

[497] A. Yes. He has that history, and I've read that history.

Q. All right. You just don't know for sure –

A. That's right.

Q. – what it is that you read?

A. That's right.

Q. Okay. Oh, would it also be fair to say, Dr. Mabugat, this – the incident in 1993 where he attacked the woman in the video store in Leawood, you're somewhat familiar with that, right?

A. Yes.

Q. All right. He did that offense when he was well into his forth decade of living, right?

A. Yes.

Q. Okay. And there's nothing magical to say that when a person turns 30, all of a sudden the symptoms of antisocial personality disorder are going to appear, right?

A. Yes.

Q. Disappear?

A. Disappear.

Q. As a matter of fact, the longer history a person has, the less likelihood that you can safely say that they are no longer going to be suffering from antisocial personality disorder?

[498] A. Exactly. It would take a long time.

MR. TOTH: Thank you, Doctor.

THE COURT: Recross?

MR. DONHAM: Thank you, Judge.

RECROSS-EXAMINATION

BY MR. DONHAM:

Q. Doctor Mabugat, since we're on the subject of what needs to be shown, I think at your deposition you agreed with me that the United States Supreme Court in its opinion involving a gentleman by the name of Hendricks said that they would sustain a sexual predator program here in the state of Kansas to that very small subset of dangerous people whose volitional control is so impaired by this particular mental abnormality or personality disorder that they are unable to control their behavior. And you agreed with that on July 9; is that right?

A. Yes.

Q. So the United States Supreme Court has passed judgment on the Kansas Sexual Predator Act, hasn't it?

A. Yes.

Q. And it's limited its application, hasn't it?

A. Yes.

[499] Q. You were aware that initially this Sexual Predator Act was found unconstitutional by the Kansas Supreme Court?

A. Yes.

MR. TOTH: Objection, relevance.

THE COURT: Sustained.

Q. (By Mr. Donham) Let's go back to criminal history very briefly. I have a couple of questions for you, and then I think I'll be done, Judge.

If I understand the report that you prepared on March 3rd, you said that if the sexual offenses in his criminal history were true, then he's a sexual predator.

A. That's correct.

Q. You said if we only consider the sex offense involving a woman by the name of Ms. Shy, who's testified there yesterday, the video store incident, if we only considered that and his current mental status, he's not a sexual predator.

A. That's correct.

Q. And you're saying that you didn't have his complete criminal history when you made your initial evaluation of him?

A. That's correct.

[500] Q. In the list of sex offenses, it is not true that if we go back in time from his January 1993 video store offense, you have to go all the way back to 1988 where he was charged with grabbing a woman riding on a bicycle path; those charges later dismissed when she identified someone else? Is that correct?

A. Yes.

Q. You're saying that in performing a sexual predator evaluation to potentially lock someone up for the rest

of their life, you spent the month of February, and your records didn't go back as far or any farther than – or didn't come forward, I should say, through 1988?

A. We have a record way before that that came when Mr. Toth –

Q. Okay.

A. – sent us this information.

Q. Well, what I keep coming back to here, if his sex offenses ranged from about 1985 to 1988, you had those initially, didn't you?

A. Yes.

Q. Well, there weren't any other sex offenses, were there?

A. I'm sorry? Excuse me?

[501] Q. Look at the list that you compiled where you say if we consider these he's a sexual predator. It's your report. You've got two sex offenses that occurred in 1986, you've got a 1985 indecent exposure, right?

A. Yes.

Q. You've got October of '88, the incident where someone said he pulled her off a bicycle. Correct?

A. Yes. That's correct.

Q. And then you have the offense that he was sent down to Larned for in 1993, and you had all those reports, right?

A. Yes.

Q. When he went down there in 1993 for an evaluation, did they not have his complete criminal history up to including his offense in 1993?

A. Yes. But the records that we have available to us at that time, as I was saying earlier, was not complete. It might have been there, but it was not available for us at that time. It was only after we have all this [sic] records available to us that we were able to make the decision, made the decision that he is.

Q. So you had all the records from the Department of [502] Corrections?

A. Yes.

Q. You had the records from his January 1993, which were your own records right there at Larned?

A. Yes.

Q. You've got the commitment review release, right?

A. Yes.

Q. I mean, in order to initiate the sexual predator, someone from Lansing Correctional Facility set down and compiled a complete list of his criminal history in order to provide that to a term of prosecutors known as the Commitment Review Committee, am I right?

A. That's right.

Q. And that Commitment Review Committee made a recommendation to Carla Stovall, the Attorney General, that there may be evidence here this person's a sexual predator, right?

A. Right.

Q. And you're saying, then, that all of that compiled by the Department of Corrections in 1997, which included a 1993 conviction, 1988 assumption, two convictions in '85 – or in '86 and '86, you're saying all these people that put all this together overlooked what?

[503] MR. TOTH: I –

Q. (By Mr. Donham) What criminal offense did they all overlook?

MR. TOTH: I'm going to object. Where are we going with this? What's the relevance, Your Honor? Doctor Mabugat has made his diagnosis. If he didn't have information initially and now does, I think he's explained it. It seems to me that we're badgering him at this point.

THE COURT: Overruled. Can you answer that question?

Q. (By Mr. Donham) What offense did you not have? What came as a surprise on the 28th day of February?

A. The records that was mailed to us by Mr. Toth. I was saying earlier that all this [sic] records might have been available, but we were not able to read those documents –

Q. So you made a –

A. – during – while we – when we made the preliminary draft. But after we received this – I'm not saying that this informations [sic] were not available in our record in the hospital. Could have been there. But we were not able to read [504] those documents or medical

records. It was not only – it was only after Mr. Toth sent us this record that it became obvious that there was a pattern of behavior that he has been exhibiting for a long period of time.

Q. Did that record from Mr. Toth include this 1988 episode –

A. Yes.

Q. – where a woman said –

A. Yes.

Q. That was a new offense that you hadn't seen? Correct?

A. A new offense?

Q. Well, it was an offense that you hadn't seen before, am I right?

A. Yes.

Q. Did it include one where a couple of women were out getting in a car by a snow bank in a parking lot and a guy in a brown car with long brown hair pulled up and was masturbating, and so they sat there and smoked a couple of cigarettes while they decided what to do? Was that one of the new offenses provided to you?

A. I think so, yeah. I can't specifically remember every offense.

[505] Q. In your report, you specifically said that if those offenses are true, he's a sexual predator.

A. Yes.

Q. Let me ask you something, Doctor. What if the allegation by this woman in 1988 where she picked somebody else, what if that were not true? Would that change your opinion?

A. What I mean – let me clarify my view regarding this. When we stated here that if the criminal offenses listed during – in the criminal history section are true then he is, because in that way we will – we were able to determine the pattern of behavior that he has been exhibiting.

Now, if we only consider the case, the current case in 1993, we were not able to establish the pattern of behavior. So that this is what we mean by if it is true then he is, because there's a pattern of behavior there. If we only consider the offenses that – the current case from 1993, then we cannot establish the pattern of behavior. Without the list of offenses that he had previously, we were not able to establish the pattern of behavior.

Q. Well, let me ask this a different question, then. In the criminal history that you relied on where [506] you said – or you made your opinion contingent on that history being true, how many of those, if they were shown not to be true, would it take for you to change your opinion?

A. I don't know.

Q. You don't have any feel at all?

A. I don't –

Q. Let me ask you this: What if the only criminal offenses you had that were considered valid was an offense in October of '86 and December of '86, and then

there was a long spell of nothing, and then in January of '93 there was another offense? Is that a pattern?

A. I would say so.

MR. DONHAM: No further questions.

THE COURT: Anything further?

MR. TOTH: No. Thank you.

THE COURT: All right. Thank you, Doctor.

THE WITNESS: You're welcome.

MS. CAMERON: Just can we break for five minutes?

THE COURT: Yeah. You want to come up?

CIVIL ACTION

IN THE DISTRICT COURT FOR THE
TENTH JUDICIAL DISTRICT OF KANSAS
JOHNSON COUNTY, KANSAS

Case No. 97C16409
Appellate Ct. No. 98-82080-A

[Caption Omitted In Printing]

[507] (An off-the-record discussion was had by Court and counsel at the bench out of the hearing of the jury and the reporter.)

THE COURT: Ladies and gentlemen, we'll take a short break here, five minutes or so, and then we'll move on to the State's next witness. Remember the admonition not to discuss the case.

(A break was taken.)

THE COURT: Mr. Toth, you can call your next witness.

MR. TOTH: Thank you, Judge.

KENNETH EAVES,

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TOTH:

Q. Would you state your name, please.

A. Kenneth Eaves.

Q. Mr. Eaves, what's your occupation?

A. Psychologist with Larned State Hospital.

Q. Okay. Do you have a title that goes along with that, being a psychologist?

A. LMLP.

Q. What does that stand for?

A. Licensed master's level psychologist.

[508] Q. How long have you been a licensed master's level psychologist?

A. About a year.

Q. Okay.

A. Or so. It just changed from registered master's level psychologist to licensed.

Q. The Kansas Board of Behavioral Science changed the designation of master's level psychologist about a year ago?

A. About.

Q. Okay. How long were you a registered master's level psychologist prior to that?

A. Since registry started. Several years.

Q. You have any idea how long?

A. Three years or so.

Q. Okay. How long have you been a psychologist?

A. I've been a psychologist since I started at Larned in 1983, October.

Q. Okay. So you've been a psychologist since 1983, then?

A. Yes.

Q. Okay. So that's about 15 years?

A. Yes.

Q. You know Bob Huerter, don't you?

A. I do.

[509] Q. Okay. He testified earlier this afternoon, and he's a licensed master's level psychologist as well, correct?

A. Mm-hmm.

Q. Do you have the same rights and privileges for diagnosis and treatment as Bob Huerter does?

A. Yes.

Q. And essentially do you perform the same kind of job functions as Bob Huerter? You do evaluations on people?

A. Yes.

Q. And over the course of your employment, have you done sexual predator evaluations on people?

A. Yes.

Q. And are you familiar with what the DSM-IV is?

A. Yes, I am.

Q. Okay. That's the big red book, right?

A. Right.

Q. And you use that to help you make a diagnosis, correct?

A. Right.

Q. Are you aware of the 1993 – well, are you aware of the Kansas Sexual Predator Act?

A. I am.

Q. And have you had an opportunity to review that?

[510] A. I – yes.

Q. Are you familiar with the requirements of that statute?

A. I am.

Q. Okay. Did you perform an evaluation on Michael Crane?

A. I did.

Q. Is this Mr. Crane right behind me?

A. Yes.

Q. Okay. And are you familiar with Dr. Leonardo Mabugat?

A. I am.

Q. Okay. Did you work with Dr. Mabugat on the Crane evaluation?

A. I'm sorry?

Q. Did you and Dr. Mabugat work together on the Crane evaluation?

A. Oh, yes, I'm sorry.

Q. Did you both reach the same conclusions and opinions?

A. Yes, we did.

Q. And that opinion is that Mr. Crane suffers from exhibitionism and antisocial personality disorder, correct?

A. Yes.

[511] Q. Okay. Now, was that your original diagnosis, Mr. Eaves? Well, no, let me strike that. When you first met Mr. Crane, because you met him personally, correct?

A. Yes, at a staffing. It was in a group interview situation.

Q. Okay. When you first came into contact with Mr. Crane, did you have all available criminal history to you concerning Mr. Crane?

A. I hadn't seen it yet.

Q. Okay. What was your understanding of Mr. Crane's criminal history before you actually saw it?

A. Before I saw it?

Q. Yeah.

A. I had no understanding of it.

Q. Okay. Did you know anything about his criminal history? I mean, did you know, you know, here's a guy

who's coming in who's just a flasher, or here's a guy who, you know, likes kids, or – I mean, did you know anything about him at all?

A. No, I didn't.

Q. Okay. At some point in time did you, in meeting with Mr. Crane, tell him that it would in all likelihood be your opinion that he would not be a sexual predator?

[512] A. At one point, yes.

Q. Okay.

A. Early on.

Q. Why is it that you told him that? Because apparently that's caused some consternation.

A. It was really too early. I shouldn't have said anything.

Q. Okay.

A. But we had just did our initial interview, and he was explaining that he was – he had a problem with – with flashing, exhibitionism.

Q. Okay.

A. And after the interview, we were thinking that there may not be all that much to this sexual predator evaluation.

Q. Okay. So you were basing your opinion at that point, a preliminary opinion, on the criminal history Mr. Crane gave you, correct?

A. Yes.

Q. Okay. You did not know at that point in time that Mr. Crane had been convicted of sexually assaulting and physically attacking a woman, correct?

A. I don't recall that, no.

Q. Okay. And you were not aware that he had been [513] convicted of attacking more than one woman?

A. No, I did not.

Q. Okay. So Crane's telling you what his criminal history is, and you're going off of that, and you're saying, Well, if that's all it is, it's probably not going to be a sexual predator, correct?

A. Yeah.

Q. Have there been times you have declined to make a recommendation somebody's a sexual predator?

A. Have there – I'm sorry. Are you asking have there been predator evaluations that we did not find –

Q. Yes.

A. – to be predators?

Q. Yes.

A. Yes.

Q. Okay. So if you would have actually written a report that said in our opinion this person is not a sexual predator, that would not have been unusual for you?

A. No, it wouldn't have.

Q. Would it be fair to say, then, that Mr. Crane was not completely being truthful with you during your interview process about his criminal history?

[514] A. At least not totally forthcoming.

Q. Okay. Certain important omissions there?

A. Yes.

Q. Okay. And is it your opinion, Mr. Eaves, that the diagnosis that you and Dr. Mabugat made of exhibitionism and antisocial personality leads you to the opinion that Mr. Crane is likely to commit future acts of sexual violence if not kept in a secure facility?

A. Likely.

Q. Right. And you and Dr. Mabugat essentially agree on your findings, correct?

A. Yes.

MR. TOTH: Okay. Thank you, sir. Nothing further.

THE COURT: Mr. Donham, cross?

MR. DONHAM: Thank you, Judge.

CROSS-EXAMINATION

BY MR. DONHAM:

Q. Mr. Eaves, you've been subjected to a deposition in this matter; is that correct?

A. Yes, I have.

Q. You understand at the time of that deposition on July 9th you were testifying under oath?

A. Yes.

[515] Q. And I asked you a number of questions concerning your opinions about Mr. Crane; is that right?

A. I – yes.

Q. Okay. Do you have a copy of your deposition in front of you?

A. No, I don't.

MR. DONHAM: May I approach the witness, Judge?

THE COURT: Sure.

MR. DONHAM: I don't know if I should mark this or not. Why don't we mark it just for record purposes. You want to make it our Exhibit A?

Q. (By Mr. Donham) Mr. Eaves, I've handed to you what's been marked as Defendant's Exhibit No. A, and that is a copy of your – it is a transcript of your testimony under oath on July 9th. The District Attorney's Office would have sent to you a copy of that transcript. Have you – did you receive it?

A. Yes, I did.

Q. And did you review it?

A. Yes.

Q. Was it correct?

A. Seemed to be.

[516] Q. Did you have to make any changes to it?

A. I did not make any changes.

Q. Okay. On page 80 of your deposition, talking about Mr. Crane, you said that in your opinion, his exhibitionism was not heinous?

MR. TOTH: I'm going to object. That's an improper question, Your Honor. I think he needs to ask him his opinion, and then if there's a disagreement, we go into the deposition. If not, we're going to be here all day.

MR. DONHAM: This is cross. I can ask leading questions and actually make statements and ask for a yes or no.

THE COURT: Well –

MR. DONHAM: I'll rephrase the question, Judge.

THE COURT: All right. Thank you.

MR. DONHAM: I'm not sure what mistake I made.

THE COURT: Well, the way I would like to have this done is ask him the direct question, and if he gives an answer you don't think is consistent with his deposition testimony, then you can refer to the deposition.

MR. DONHAM: Okay.

[517] Q. (By Mr. Donham) In your opinion, is exhibitionism heinous?

A. No.

Q. Do you feel that a person diagnosed with exhibitionism is dangerous to others?

A. Ordinarily not.

Q. Okay. I think your testimony back then on page 80 going over to 81 was that if the person acted on an urge to expose himself, it would be just to expose himself; is that correct?

A. Yes.

Q. And I asked you at that time if you were familiar with a list of the sexually violent offenses that one has to be likely to commit in order to be considered a sexual predator. Do you recall that?

A. Do you – are you referring to items 1 through 12, Section E of the Predator Act?

Q. Most definitely.

A. Okay.

Q. Those where the Sexual Predator Act defines, quote, sexually violent offenses, end of quote?

A. Yes.

Q. You're familiar with that now?

A. Uh-huh.

Q. Where the diagnosis of exhibitionism is somebody [518] likely, due to that mental disorder, likely to commit one of those sexually violent offenses?

MR. TOTH: I'm going to object, Your Honor, and ask to approach. And I apologize for that.

THE COURT: All right. Come on up.

(The following proceedings were had at the bench by Court and counsel out of the hearing of the jury:)

MR. TOTH: Your Honor, that's an improper question. The statute does not require that a person have to commit a sexually violent offense if they're a predator. The statute requires that they're likely to commit predatory acts of sexual violence, which is set out in subsection (c).

This section has to do with the prerequisite conviction, not with what they're going to go out and do. And he's misleading the witness and misinterpreting the statute by asking a question like that.

MR. DONHAM: Maybe I don't understand. Are you saying that the Sexual Predator Act could lock someone up in order to prevent him from exposing himself in the future?

[519] MR. TOTH: If the jury determines that that is a predatory act and they've been convicted of one of these 12, then it's up to the jury to decide. But they don't have – we don't have to prove that he's going to prove 1 through 12.

MR. DONHAM: I can't read it –

THE COURT: Well, I agree with that, although there would hopefully be a great deal of overlap. The list of offenses is the threshold conviction requirement or offense requirement to apply the statute, and predatory acts of sexual violence are otherwise defined in the statute. So I think the objection should be sustained because it assumes – the question assumed otherwise.

MR. DONHAM: I'm sorry, Judge, I don't understand. Are you saying –

THE COURT: Well, in other words –

MR. DONHAM: – what – likely to re-offend to me, to re-offend means to do one of those sexually violent offenses again.

THE COURT: Not exactly. Because you could have a predatory act of sexual violence that's not on that list. Don't ask me what one would be, but . . .

MR. DONHAM: Okay. Well, I don't know [520] what it is that the State's worried about. Maybe I could inquire. Well, I'll withdraw the question. I'll move on.

THE COURT: Well, and –

MR. DONHAM: What's the purpose of this? Are you afraid he's going to flash? Are you afraid he's going to assault –

MR. TOTH: I think it's entirely possible, if phrased the right way, the jury could find flashing a predatory act of sexual violence. It may not be a prerequisite, but it is certainly the type of act that establishes the motive or purpose of victimization, and that's why I object because I think under certain circumstances a jury could find that.

THE COURT REPORTER: I didn't hear that last one.

MR. DONHAM: Sorry. You probably shouldn't have.

THE COURT: To continue that though, you could obviously ask him if he thinks somebody with just a diagnosis of exhibitionism is likely to commit, you know, predatory acts of sexual violence. That would be a better question than is he going to commit one of the things on the [521] offense list.

MR. DONHAM: Okay. Thanks.

(Thereupon, the following proceedings continued in the hearing of the jury:)

Q. (By Mr. Donham) Mr. Eaves, in your professional opinion, if someone is diagnosed with the mental disorder of exhibitionism, would that person be likely to commit a future act of predatory sexual violence?

A. No. Not likely.

Q. I think – would you agree that Mr. Crane did not assault the women in question because he was an exhibitionist?

A. No.

Q. You would – would you agree with that statement?

A. I agree.

Q. In other words, he doesn't assault women because he's an exhibitionist?

A. That's right.

Q. I think you've testified he assaults them because he's got this antisocial personality disorder.

A. Yes.

Q. Okay. I think you've also testified that his antisocial personality disorder does not affect his ability to control his behavior.

[522] MR. TOTH: I'm going to object. I didn't – I don't believe he testified to that on direct examination.

THE COURT: I'm sorry. I'm going to have to hear that question again.

MR. DONHAM: Let me withdraw it and restate it.

THE COURT: All right.

Q. (By Mr. Donham) Mr. Eaves, in your professional opinion, do you think Michael Crane, Crane's antisocial personality disorder, affects his ability to control his behavior?

A. Yes.

Q. Does it impair it to the degree that he can't control his behavior?

A. I don't think so. No.

Q. When you begin a sexual predator evaluation, what things do you want to have or do you need to have to do a sexual predator evaluation?

A. Background information primarily.

Q. Could you be more specific?

A. History.

Q. What kind of history?

A. Criminal history.

Q. That's the first thing you've mentioned. Is that [523] the most important thing that you would want before you would make an opinion?

A. Well, his charges, anything like that. But that would be part of his history I would think criminal history, charges and convictions, that sort of thing.

Q. Did you have any information about his prior criminal history when you began your evaluation?

A. Yes, I think we had them available. I wasn't looking at them right away. We interviewed Mr. Crane the first day he came to the unit or close on to the first day, within a couple days.

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CIVIL ACTION

IN THE DISTRICT COURT FOR THE
TENTH JUDICIAL DISTRICT OF KANSAS
JOHNSON COUNTY, KANSAS

Case No. 97C16409
Appellate Ct. No. 98-82080-A

[Caption Omitted In Printing]

* * *

[41] (Whereupon the jury returned to the courtroom.)

DOUGLAS L. HIPPE,

called as a witness on behalf of the State, after first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TOTH:

Q. Would you state your name, please.

A. Douglas L. Hippe.

Q. And what is your profession?

A. Licensed psychologist.

Q. Dr. Hippe, how long have you been a licensed psychologist?

A. Since – 27 years.

Q. Can you tell us a little bit about your educational background?

A. I have a Ph.D. in clinical psychology and also in clinical neuropsychology from the University of North Dakota. Post-doctoral or pardon me – doctoral internship at KU Medical Center. Had taught there for sometime. Taught at the University of Missouri Kansas City. Had been in private practice since that time.

Q. Can you tell us about your professional background [42] there, what you did after your education?

A. Again, I've been in private practice and have done a combination of things related to that practice. A lot of individual therapy, family therapy. In the most recent years, I have more specialized in more difficult cases. I'm the clinical director to the mental health centers in southeast Kansas, have been for 18 years. Do the risk management associated with those facilities. Again, been in private practice and the practice consisted of individual therapy, group therapy, working with adolescents, adults, and some geriatric patients.

Q. You work with sex offenders also?

A. Yes, I have.

Q. Okay. Now, Dr. Hippe, I have your resume that you provided to us, and it's about five pages long. I want to skip through some of it, but you are a member of a number of professional organizations related to the field of psychology; is that correct?

A. Yes.

Q. Have been for many many years?

A. All through the years.

Q. You are also – quite extensively have been published in the area of psychology?

A. Yes.

[43] Q. You testified before, Dr. Hippe, as an expert in the area of making the diagnosis of psychological disorders before?

A. Yes.

Q. Approximately how many times have you testified as an expert in that area?

A. Probably average of six to 10 times a year.

Q. Okay.

A. When I was actually on the stand.

Q. Okay. And so we are talking upwards of a hundred times testifying?

A. Yes. Probably very close.

Q. You indicated, Dr. Hippe, that part of your present duties as clinical director to clinics in the State of Kansas, you do risk assessment?

A. Risk assessment, risk management as clinical director.

Q. Can you tell me what that is?

A. Well, the primary focus is on risk management for both mental health centers. It's looking at the most difficult cases that come to us, whether they be transferred from other states, or come out of Larned or Osawatomie, or through our court system, and looking at

the risk both to the mental health center, to community at large, and then coordinating [44] treatment programs for those individuals if it's within our purview if we can provide services.

Q. Okay. To do the risk assessment portion of it, would that generally involve then meeting with the patient, looking at the patient's background, and trying to make determination for yourself how is the best way to deal with that?

A. Yes. The first steps are as referral we may get releases of information from all of the treatment facilities, correctional facilities that were involved, and start out with that, then do some initial assessments, typically psychological testing in addition to that, and then we have a panel that meets to discuss the case and to discuss treatment options.

Q. I take it that you are licensed in the State of Kansas to diagnosis individuals with psychological disorders?

A. Yes. Both in Kansas and Missouri.

Q. And provide treatment as well?

A. Yes.

Q. Okay. Keep current in the literature?

A. Yes.

Q. You are familiar with the DSM-IV?

A. Yes.

[45] Q. That would be the big red book, correct?

A. Yes.

Q. Sometimes referred to as the Bible of psychologists and psychiatrists?

A. Yes.

Q. Do you use the DSM-IV in helping you make an assessment of an individual when you diagnose them with a mental disorder?

A. Yes. It serves several functions in terms of providing a closer look at the focus of treatment. It's a primary way of communicating information to other institutions. Whether we get records from Osawatomie or Larned, wherever it might be, and if an individual has DSM-IV classification diagnosis, we have a much more accurate idea of what they are, what they've been through, what kinds of things we are looking at. It's a way of providing a good summary of treatment, underlying personality, medical problems, social problems, and the like.

Q. Okay. Dr. Hippe, are you familiar with who Michael Crane is?

A. Yes, I am.

Q. And this would be Mr. Crane seated in the chair over here with the brown shirt on, short sleeve? (Indicating)

[46] A. Yes.

Q. Did you conduct a psychological evaluation on Mr. Crane back in 1994?

A. Yes, I did.

Q. What was the purpose for you conducting that examination back in 1994?

A. It was to provide more information on his psychological and emotional status in and around the time of commission of the crime he was charged with.

Q. That crime, just to set the record straight, was the original kidnapping charge from 1993 at the Movie Exchange video store in Leawood?

A. Yes. I believe there were other charges.

Q. There was also a lewd and lascivious charge that was attached to that where he exposed himself to a woman in a tanning salon earlier that evening?

A. Correct.

Q. That would be his most recent criminal conviction?

A. Yes

Q. And at the time of this event, you were aware, Dr. Hippe, that Mr. Crane had claimed that he may have been insane, or was suffering from a blackout when he committed that offense?

A. Yes.

Q. Did you look into that?

[47] A. Specifically, yes.

Q. Did you – since your initial evaluation in 1994, have you supplemented yourself with information that's been provided to you from the Department of Corrections, from Larned State Hospital, and things of that sort?

A. Yes. I've have a chance to review in detail of the documents they provided to us.

Q. Okay. At this point in time, do you feel comfortable that you have up-to-date information regarding Mr. Crane?

A. Yes.

Q. When you conducted your interview with Mr. Crane, did you conduct an interview with Mr. Crane when you conducted your evaluation back in 1994?

A. Yes. There were multiple interviews.

Q. The purpose of the interview is what?

A. At the time, I was to get a better understanding of the feeling for the dynamics of Mr. Crane, psychological functioning, his emotional functioning, to get in detail reports from him of his functioning at the time of the incident, to get family history, background history, criminal history, and the like.

Q. Okay. Now, Dr. Hippe, when you did your evaluation on Mr. Crane, you ended up forming a diagnosis based [48] on your training and experience as to mental disorders Mr. Crane was suffering from, correct?

A. Yes.

Q. And since that time in 1994, you are aware Mr. Crane has been sent to prison?

A. Yes.

Q. When you were contacted by our office about doing some follow-up work that has to do with the sexual

predator proceeding, did you attempt to go meet and speak with Mr. Crane over at the Johnson County Jail?

A. Yes. I had set up a time to meet with him contact visit.

Q. Did you go ahead and meet with him?

A. Well, we attempted to. We got to the door, and he said his attorney would not allow him to have contact with me.

Q. But did Mr. Crane understand what the purpose of you being there was for?

A. I assume that he did. We did not have a chance to talk about it.

Q. Notwithstanding the fact that his attorney wouldn't let him talk to you, do you feel comfortable that you are in a position today to still make a diagnosis regarding his mental state?

A. I do feel comfortable with the information that I've [49] gotten from Larned Hospital, from prison. There are several updates in there of his functioning, his course of treatment, his behavior during that time, particularly psychological testing, and so I'm comfortable with that information.

Q. Okay. Had you conducted some testing on Mr. Crane yourself back in 1994?

A. Yes. In '94, we did extensive testing.

Q. What kind of testing?

A. It was a rather wide range of testing. We did some personality testing, did intellectual testing, memory

testing, testing for any neuropsychological defects that might be present which would be more of a genetic kind of nature. Since there are – dissociative episodes were claimed, we looked into that by wag of the psychological testing, and memory testing, and the like. So it was a rather detailed evaluation, and I believe a very detailed report, too.

Q. The testing that you did, that's the type of testing that's generally accepted in your field for purposes of making a diagnosis regarding a patient's particular psychological disorder?

A. Yes.

Q. Are you familiar with the Kansas statute regarding [50] sexual predators?

A. Yes, I am.

Q. And I want to direct your attention to that. Do you have a copy of that with you?

A. I did in the materials just that –

MR. TOTH: And I can approach the witness?

THE COURT: Yes.

Q. (By Mr. Toth) Before we get into the statute, let me ask you this, Dr. Hippe. Your diagnosis that you made back in 1994, is it the same diagnosis that you would make today?

A. Relatively, yes. I believe there was some minor change in terms of some of the depression, I think, that we had seen at the time. Bear with me. I think at the time, we had diagnostic impression of a Dysthymic Disorder,

and by my understanding from the records from Larned, that has improved, and as I understand, is not requiring treatment or has not.

Q. Dysthymic Disorder is depression?

A. Yes.

Q. In your opinion, Dr. Hippe, in 1994 and 1998, does Mr. Crane suffer from a personality disorder?

A. Yes, I do.

Q. What is that personality disorder?

[51] A. Antisocial Personality Disorder.

Q. Okay. And that's the finding you made back then, correct?

A. That is correct.

Q. It's the finding that was made in Larned, and finding that you still make today?

A. Yes.

Q. Let's talk about the statute, if we could. The statute defines a sexually violent predator as "a person convicted of or charged with a sexually violent offense", and you know that to be true in this case?

A. Yes.

Q. "And who suffers from a mental abnormality or personality disorder which makes" the person "likely to engage in predatory acts of sexual violence if not confined in a secure facility". Let me ask you about the "who suffers from a mental abnormality or personality disorder

which makes them likely to engage in acts of sexual violence if not confined in a secure facility" part. Do you find Mr. Crane's Antisocial Personality Disorder as meeting that legal criteria?

A. Yes, I do.

Q. Would you explain why you say that.

[52] A. The diagnosis of a personality disorder is based on the enduring traits that an individual has which can be seen either behaviorally or in terms of psychological testing. We see it in their record, particularly the Antisocial Personality Disorder which has a number of characteristics that are very carefully defined in the DSM-IV, and these traits are outside the realm of normality. The kind of things that we would expect in average individuals in our society that cause enduring trouble, enduring difficulties either with the law or psychologically, personally, or in the community in some way.

Q. Okay. There are seven listed patterns of behavior listed in the DSM-IV for Antisocial Personality Disorder. Would that be fair to say?

A. Yes.

Q. Okay. How is it that you look at those seven, and decide whether or not you think somebody has Antisocial Personality Disorder?

A. Again, it's based on the kinds of things that we get from past history, family history, community history, treatment history, offenses charged, allegations, all sorts of things. May be from the history of the individual or their caretakers, or from treatment facilities. We also use information from [53] psychological testing because,

again, these rather enduring character traits, if you will, tend to be very stable across time, and relatively unchangeable.

Q. Okay. When you look at the seven, is there a magic number how many you need to find before you say this person has Antisocial Personality Disorder?

A. Well, DSM-IV specifies that there need to be at least three of the seven present. They can be in any combination.

Q. If I can go through the first criteria listed in DSM-IV, a person who has this, it says "There's a pervasive pattern of disregard for and violation of the rights of others occurring since age 15 years". That's kind of the general definition of what Antisocial Personality Disorder is, correct?

A. Yes.

Q. And then it lists criteria. First one is "failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest". Do you find Mr. Crane as falling within that criteria?

A. Very clearly.

Q. Why do you say that?

A. Again, based on his arrest history, charges made. We've got quite extensive – or he has quite extensive [54] background in terms of breaking the law and violating rights of other people.

Q. Okay. The second one is "deceitfulness, as indicated by repeated lying, use of aliases, or conning others

for personal profit or pleasure". Do you find that criteria applying to Mr. Crane?

A. To at least a moderate to serious degree. I would base this on my personal experience with him, and the experience that I see in the reports from Larned. Saw that in Dr. Logan's report as well. In terms of his either minimizing the history of the occurrences of various offenses, whether they be thefts, breaking and entry, sexual kinds of behaviors that are outside the norm. All of these, again, tended to be minimized, or it really didn't happen that way, or there was some other circumstances. When we get the information from our legal system, it's very clear. It was very extensive history.

Q. Is there also – I'm sorry.

A. There were many other times both in my meetings with him a year ago, and in the current updates and evaluations that I've read over the last weeks where it was noted that Mr. Crane had obviously neglected to tell people about numerous occurrences, and both in terms of frequency and severity of the crime so [55] that he lies, yes.

Q. Usually has to do with criminal history, or severity and frequency of his criminal activities.

A. Correct.

Q. Criteria Number 3 "impulsivity or failure to plan ahead". Do you see any of that?

A. His history is replete with those kinds of examples. From the time he was a youngster all the way through to the time of his last arrest and incarceration. We see numerous examples of low frustration tolerance

and impulsivity. I think those are two hallmarks of his behavior.

Q. How old was Mr. Crane when he first started to engage in these type of behaviors?

A. Some of the first references I had seen in the reports – and I didn't go into all of what Dr. Logan had presented, but I recall he had a very thorough and extensive history that matched what I had had, and some ways was even more complete. But extending back to grade school, preadolescence references to age 10. He had been in McCune Home for boys for some extensive time related to out of control behavior.

Q. And he started actually the references, and I think Dr. Logan's report indicates Mr. Crane probably started exposing himself maybe –

[56] MR. DONHAM: Objection. Leading. Object to the leading question.

THE COURT: Sustained.

Q. (By Mr. Toth) Do you know what the records indicate how old Mr. Crane was when he started exposing himself?

A. Again, my first recollection of that kind of behavior did start when he was approximately 10. There were numerous examples of that from that time on from unzipping his pants at a party to peeing on a driveway in public to other types of exposure particularly to women, to girls at that time. That continued on through his history, and increased in terms of both frequency and severity.

Q. Criteria Number 4 is "irritability and aggressiveness, as indicated by repeated physical fights or assaults". Do you see that in Mr. Crane?

A. Yes. And that's also in the history of charges that have been brought against him by our legal system.

Q. Criteria 5 "reckless disregard for safety of self or others". Do you see that criteria?

A. Yes. Again, I think just in the examples that we have from childhood, it continued through adolescence, young adulthood, and up to 1994.

Q. Criteria 6 "consistent irresponsibility, as indicated [57] by repeated failure to sustain consistent work behavior or honor financial obligations".

A. His work behavior, he had worked in landscaping, and I think that was probably some of the longest history. He had made a good living at that point. I had the sense from what he had told me and from Dr. Logan's report in the history there, that at times that would be sporadic.

Q. And finally 7, "lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another".

A. Again, I see that throughout his history, at least the interviews that I had had with him, the subsequent ones that we see from Larned State Hospital. I believe that's reflected in Dr. Logan's report, too. As far as the many omissions and the trying to make light of or excuse his behavior or say it wasn't that serious or just omit.

Q. Right. Okay. That's the seven criteria, so Mr. Crane really to certain respects meets every single one of them, not just three of the seven; would that be fair to say?

A. Yes. Only three are required, and I think that there are probably only a couple of them that if we listed them as "mild", "moderate", and "severe", I would put [58] most of them at "severe", and there were a couple that would be moderate such as employment, I think was – there was some substance there.

Q. Dr. Hippe, Mr. Crane also suffers from Exhibitionism which is a separate disorder apart from Antisocial Personality Disorder?

A. Yes.

Q. Can you explain what that is, Exhibitionism?

A. Exhibitionism typically is a set of behaviors that leads an individual to either expose themselves to other individuals, whether it be male or female, or to engage in those kinds of behaviors in public. They may be sexually related, typically are. There sometimes is felt a drive to do these kind of behaviors to follow through, sometimes related to thrill seeking excitement.

Q. Do you know whether Mr. Crane has indicated either to you or Dr. Logan whether or not he feels like he could control this drive that he gets?

A. I believe that he had said both to me, and I believe Dr. Logan –

MR. DONHAM: I'm going to object. I think it's speculative on anything he may have spoken to Dr.

Logan. Would also be hearsay especially since the witness has already indicated he's not sure by [59] his equivocal answer. We object to that answer.

THE COURT: Well, if you want to lay some more foundation what he told Dr. Logan, or we can confine the question to what he told Dr. Hippe.

MR. TOTH: Okay.

Q. (By Mr. Toth) Do you have any recollection of what he may have told you, Dr. Hippe, about what drives him?

A. Yes. Again, it was that seeking of both stimulation, sense of shock, sense of control over other people. He had said that he felt that he could control that, and felt that that wasn't a problem that he couldn't manage, and that was indicated in one of the Larned reports as well.

Q. Okay. Now, are you aware of whether or not he may have told Dr. Logan that he can't control that behavior, or do you have any independent recollection of that?

A. That, I don't.

Q. We'll take that up with Dr. Logan.

If a person is just an exhibitionist, would it be fair to say that you would not come in here and say they're a sexual predator?

A. Exhibitionism alone would not be the sole basis for saying that an individual is a sexual predator.

Q. What, in your opinion, makes Mr. Crane rise to that [60] level to where you're comfortable in saying that he meets the legal definition of a "sexual predator"?

A. I think a number of things. The sense throughout his record up to the time that I had seen him in 1994 was one of increasing frequency and particularly increasing intensity, and more of a disregard for the rights of others. These were the exhibitionism at that time had gone through the years from some of the examples that I had given to being in parking lots masturbating openly with the door of his car or truck open to the point one time where he was in a parking lot in Independence and was exposing himself, and unfortunately it was a parole officer and he said, "Oh, shit," and ran off. But she recognized him. And then culminating in the charges that he had in 1993.

Q. The person with Antisocial Personality Disorder, are those features that that person has usually changeable over time, or how could you characterize that aspect of it?

A. There's a moderate amount in the literature about treatment of Antisocial Personality Disorder. For the most part, people regard them as extremely difficult to treat, very intractable, not likely to change. There are very enduring kinds of traits. In [61] fact, I have several current books 1996 '97, '98 publications on the antisocial personality that indicate they are the least treatable of the personality disorders. In fact, when these are grouped in a number of studies, they had groupings of the depressive personality, the schizoid personality, and number of other traits that were more readily treated. There were

another group that were more moderately untreatable or treated with a great deal of difficulty, and finally the final grouping of those that felt were significantly difficult to treat was the Antisocial Personality Disorder.

Q. Are you aware of any case studies which would indicate to you how long it takes for intense treatment of the Antisocial Personality Disorder person to take?

A. Well, in my experience with treating Antisocial Personality Disorders, I think the first criterias that you really need very very firm controls, very firm controls over behavior, firm controls over their attendance, and the frequency of treatment preferably daily, preferably in a very controlled setting. The studies that show the best outcomes are those where there is secure residential placement, treatment typically goes from 24 to 36 months in that kind of [62] setting.They find treating in a group setting tends to yield the best results. In fact, some of the earliest studies outside of treating adolescents of which there's another set of literature that really parallels the treatment of adult antisocial disorders was done by the Navy, and the late 60's and early 70's and there was Roanoke Treasure Island in San Francisco, and they had a closed treatment setting, treatment was three years duration that they were committed to it, and they found moderate changes in that period of time. Anything less than that, they found typically either without treatment or a short basis of treatment that there was about an 85 percent recidivism rate as far as reoccurrence of antisocial behaviors.

Q. Without that treatment?

A. Without the treatment.

Q. You are aware having reviewed the records that, for whatever reason, the Department of Corrections did not provide that type of treatment to Mr. Crane when he was in custody, correct?

A. Yes. I understand there were problems with timing with appeals so that he was not afforded that kind of treatment. I believe he had 30 group therapy sessions, which is 30 hours, which is in this case [63] hardly opening the door.

Q. Are you familiar with the Sexual Offender Treatment Program that he would be required to do if he were under state parole as far as the group, going to group once a week, that kind of stuff?

A. Yes.

Q. Do you find that to be adequate?

A. With this severity and looking at the impact on individuals, the aggressiveness towards individuals, impact on them, I would hesitate significantly to look at any kind of outpatient treatment. What we have in both – in Southeast Kansas, the two treatment centers at Columbus and Pittsburgh where we've done sexual offender treatment and this is – I will keep that separate from sexual predators just for a moment. We require their participation in the program, cooperation with the court through probation parole. They are committed to a 24 to 36 month program. This isn't just weekly. They will have as many as 10 sessions a week on outpatient basis. These are the nonviolent offenders.

Q. Right.

A. And with that, and the cooperation, we have a good success rate.

Q. What makes Mr. Crane different is he has –

[64] MR. DONHAM: Objection. Leading.

MR. TOTH: Withdraw.

Q. (By Mr. Toth) Do you characterize him as a violent offender or nonviolent?

A. Violent.

Q. The next part of the statute says "makes the person likely to engage in predatory acts of sexual violence". Do you have an opinion, Dr. Hippe, as to whether or not Mr. Crane's Antisocial Personality Disorder makes him likely to engage in predatory acts of sexual violence?

A. Well, simplistically, the best predictor of future behavior is past behavior unless there's been significant intervention by way of treatment, which there has not been.

Q. Would you dare to give a – based on your professional opinion and training and experience if you were to give a percentage likelihood that Mr. Crane is going to reoffend at this point, what would – would you even hazard to guess, or prefer not to?

A. I would. There are numerous studies up to the present day which indicate a 90 percent likelihood of reoffending without treatment. I know that generally my feeling for our program and our community in southeast Kansas, and I'm sure it's the same here [65] just from my contact with individuals who run programs here, my feeling was 85 percent. I think I'm a little conservative.

Q. And in Mr. Crane's case, the recommendation or the statute says "if not confined in a secure facility". Do you share that opinion?

A. Yes.

Q. Is that because of the violent nature of his offenses?

A. Yes. That point of culmination when he was finally incarcerated. Again, I think his offenses were increasing in daringness and aggressive and impact on the community, and violence towards persons.

Q. Dr. Hippe, you've indicated that you had an opportunity to review a report that was written by Dr. Logan back in 1994?

A. Yes.

Q. Okay. At that time Dr. Logan also made a diagnosis regarding Mr. Crane's personality disorders, correct?

A. Yes.

Q. If I read Dr. Logan's report –

MR. DONHAM: Could we approach the bench?

(A discussion was had at the bench with court and counsel out of the [66] hearing of the jury as follows:)

MR. DONHAM: To the extent this witness used Dr. Logan's report to form his opinion, he would be entitled to use that as a basis, but we have not decided – it would be improper for the State to introduce Dr. Logan's testimony, anticipated testimony through this witness. Can call him in rebuttal.

MR. TOTH: I have him under subpoena. I had Dr. Logan under subpoena. Based on the conversations with Mr. Donham that he was going –

MR. TOTH: Judge, I can rephrase my question without get –

THE COURT: Let's try that.

(The proceedings continued in the hearing of the jury.)

Q. (By Mr. Toth) Dr. Hippe, I'm looking at another report regarding Mr. Crane where the final diagnosis was Personality Disorder Not Otherwise Specified.

A. Yes.

Q. Can you tell me what that is, and what that means?

A. Depending n when the report was written because we shifted from the DSM-III R to the DSM-IV in July of 1995 is when it was first published, and wasn't available until end of the year. If there was a [67] report that was done prior to that time, it would have been DSM-III R, and the criteria were different so that's why I'm –

Q. This would have been written in 1994?

A. Okay.

Q. What does Personality Disorder Not Otherwise Specified mean?

A. The Personality Disorder NOS or Not Otherwise Specified is what I would call a hodgepodge of personality disorder factors. It's used for diagnosis where there

are multiple characteristics that don't fall into any one category. It's not all histrionic, not all borderline personality, not all Antisocial Personality Disorder, not all depressive personality, but it may be a combination of several of those. Typically, back then, what we would do is put Personality Disorder NOS, and put parenthesis with say, antisocial and depressive features. Specify just to alert the individual who is reading the report or the diagnosis that those were the features that we were looking at.

Q. But it is also a personality disorder. It's just not as well defined?

A. It is a personality disorder, and typically it should be defined.

[68] Q. I see.

A. The individual should have specified what features were present or what features were suspected to be present.

Q. Knowing what you know about Mr. Crane and his history and everything that you've reviewed, if another individual in your field came up with the diagnosis of Personality Disorder Not Otherwise Specified as opposed to Antisocial Personality Disorder but everybody is in agreement on criminal history, and things of that sort that we've been talking about, would you find that diagnosis, Personality Disorder Not Otherwise Specified to also meet the legal definition provided for in the Kansas Sexual Predator Act?

A. It certainly could. If it had those characteristics with that kind of history, it would meet those criteria.

Q. Excuse me just a second. Thank you, Dr. Hippe.

MR. TOTH: I have nothing further.

THE COURT: Mr. Donham.

CROSS-EXAMINATION

BY MR. DONHAM:

* * *

[71] Q. The State called you to testify against them?

A. That is correct.

Q. The documents that you reviewed to form your opinion about Mr. Crane as he sits here today in August of 1998, were findings made by not only psychologists such as yourself, but psychiatrists, medical doctors back in 1993?

A. Yes. It was myself. There were psychiatrists, psychologists, there were reports from social workers and licensed Masters level psychologists as well.

Q. In 1993 when you were hired by the State to analyze Mr. Crane, did you reach a conclusion that he understood what he was doing?

A. Yes, I did.

Q. That his actions would have been considered intentional, willful, purposeful?

A. That is correct.

Q. In the documents you reviewed, did you review the Larned report of – I'm sorry – not Larned, but the Department of Corrections report back in 1993?

A. Yes.

Q. Did you review the Larned State Hospital Release Summary back in 1993?

A. I have my entire file here. May I refer to?

Q. Sure.

[72] A. Yes.

Q. That would be a Release Summary from Larned. Attending physician being a Dr. Fernando, a medical doctor, I presume, psychiatrist?

A. Yes.

Q. On Page 1 down near the bottom, it talks about "Axis V Global Assessment of Functioning skill". Do you see that?

A. Is that the July 2nd 1993? I'm sorry. May have picked up the wrong one from Larned State Hospital.

MR. DONHAM: Could I approach the witness?

THE COURT: Yes.

(Respondent's Exhibit D was marked for identification by the Reporter.)

Q. (By Mr. Donham) I'd like the record to reflect I've handed you what's been marked Respondent's Exhibit D. That bottom line, have you seen a copy of that report before? Did you have an opportunity to do that?

A. I would have to look through. I am sure that I had all of the information from Larned State Hospital.

Q. Okay. Down at the bottom of that page, it talks about a global assessment score, does it not?

[73] A. Yes.

Q. What was his global assessment score at the time he was evaluated in 1993?

A. It says his current GAF which is Global Assessment Functioning is 45.

Q. Could you explain for the jury what is meant by that, Global Assessment of Functioning?

A. The Global Assessment of Functioning is a measure going from roughly zero points to a hundred points on a scale indicating how well an individual is adapting to his environment, is handling his environment, that type of thing, and I don't have the DSM-III R here. I could give you the information from the DSM-IV which is identical except that it runs from zero to 99 rather than a hundred. Okay. A GAF – and they run these in groups. This particular one would be for the 41 through 50. It's considered serious symptoms. This would be such as suicidal ideations, severe obsessional rituals, frequent shoplifting, or any serious impairment in social, occupational, or school functioning, such as no friends, or being unable to keep a job.

Q. Thank you. Now, that's out of the DSM-IV; is that correct?

A. This is out-of the DSM-IV, but it is basically [74] identical to the DSM-III R. We would find the same descriptor.

Q. So if we are going to give any validity to the analysis done by the psychiatrist in 1993 at that time when they evaluated him, he showed serious symptoms, serious impairment, and social, occupational, school functionings, serious meaning suicidal, obsessional rituals, frequent criminal activity?

A. Yes.

Q. And doing your opinion on him this time, were you given a copy of the report that was compiled on Mr. Crane prior to him being released from prison by Ms. Janese Williams? It would have been entitled the "Clinical Service Report".

A. Yes.

Q. I would like to direct your attention to Page 5 of that report under "Diagnostic Impression". You have that page?

A. Okay. Yes, I have it.

Q. I suppose as a way, we probably ought to flip over to Page 6 – this report was prepared by Ms. Janese Williams, and she's a licensed Master level psychologist; is that right?

A. Correct.

[75] Q. And it was reviewed by her boss, Ms. Charlene Donovan who is a Ph.D. and a licensed Master level psychologist?

A. Correct.

Q. Going back to Page 5, it appears that in December of 1997, his Global Assessment of Functioning was what?

A. She has it as "63".

Q. Where would that fall on the Global Assessment of Functioning scale?

A. This indicates mild symptoms such as mild insomnia, depressed mood, or some difficulty in occupational or school functioning such as occasional truancy or theft within the household, but generally, functioning pretty well, and has some meaningful interpersonal relationships.

Q. Thank you. Is it safe to say in the roughly five years that Michael Crane sat in prison that the diagnosis of his ability to get along in society has improved?

A. Well, I think very clearly what it states is that prior to this time, he was not functioning well, and after this period of time in prison, he, in very structured situation, functions at a level where there are still mild symptoms.

Q. I'll ask you this. You do some general psychology [76] work, I suppose?

A. Oh, yes.

Q. If you have a child, some parents come to you, and they have a child that repeatedly does things that they don't want the child to do, and you ask the parents, "Have you ever punished the child", and they say "no",

has it ever come to pass that the first time the child really gets punished that they change?

A. Well, depending on the severity of the symptoms. If we are looking at a child who has very severe symptoms, it's unlikely it's going to change at that point. If you are talking about a child who is relatively easy to manage, is a good kid, he gets good grades, he generally has good social relationships, if he gets his hand in the cookie jar and you slap it, yeah, he might respond.

Q. So it's possible you suppose that serving five years in the penitentiary has taught Michael Crane a lesson?

A. Well, I think, based on his personality, that's very unlikely.

Q. I see. Well, in other words, you would take an objection to the reports prepared by the psychologists such as yourself, same level as yourself at Larned – I'm sorry – Department of [77] Corrections?

A. Two exceptions. Number 1, they are not at the same level. These individuals are licensed Master Degree psychologists who do not have the privilege of diagnosing, treating or the like in the State of Kansas. Number 2, I do agree with what they say that in a prison setting and structured setting where the rules are clear, where there's no opportunity or little opportunity to act out without some real significant consequences, he does much better. I think that's what we are trying to say. That's what I'm trying to say.

Q. In your Bible GAF – I'm sorry – DSM-IV, on Page 30 where it discusses what is meant by Axis V Global

Assessment of functioning, does it not say in the very first sentence that the Axis V GAF score is useful in predicting outcome?

A. It says it's useful in treatment planning and measuring impact, and predicting outcome. This is for report in the clinician's judgment of the individual's overall level of functioning, and again, this is with respect to psychological, social, and occupational functioning. It's not restricted to psychological and emotional functioning, but it's a global assessment.

[78] Q. Let's go back to the Clinical Service Report. Do you have it there in front of you?

A. Yes.

Q. If I understand this correctly, this Clinical Service Report was prepared for the Commitment Review Committee? Be right on the front page.

A. That is correct.

Q. That report is prepared specifically to be turned over to a review committee composed of prosecutors to determine whether or not the Attorney General should consider filing a Sexual Predator action, isn't it?

A. Yes, that's correct.

Q. Back on Page 6 in the last full paragraph before it gets to "upon release" and has a number of items, the last sentence where it starts with "Mr. Crane", I believe it says "Mr. Crane has not been a management problem while he's been incarcerated", right?

A. That's correct.

Q. After it reports and the following paragraph "upon release" it recommends that he "complete a structured sex offender treatment program"; is that right?

A. That is correct.

Q. "Participate in mental health counseling to continue to improve his stress management" Number 5?

A. Yes. That is correct.

[79] Q. "Seek and maintain stable employment"?

A. Yes.

Q. There was an additional evaluation performed by the Department of Corrections itself independently of that. I don't know if you have a copy of that. It's dated December 9 of 1997. It was our Exhibit C that I showed you earlier. I don't know if you still have that or not. Maybe I didn't show you C.

A. I don't believe. I have D.

MR. DONHAM: Could I approach the witness for a moment?

THE COURT: Yes.

Q. (By Mr. Donham) Doctor, if you got a copy of this, I would like, if you could find yours. I want to refer to it.

A. If I could look at it just for a second. I don't believe that I have a copy of this. Yes, I do.

Q. Ready?

A. Yes.

Q. Like to turn over to Page 2. It talks about the pre-release reintegration. Are you familiar with the scoring they do on that?

A. This is on –

Q. Page 2.

A. Okay.

[80] Q. Kansas Department of Corrections Evaluation and Classification Report December 9 of 1997.

A. I'm sorry. What I have here is the Evaluation Classification Report from 1-20-98. I have the next month.

MR. DONHAM: Could I approach, Judge?

THE COURT: Yes.

Q. (By Mr. Donham) If you would just read to the jury, please, the pre-release reintegration scores Mr. Crane had. This is on our Exhibit D.

A. Okay. The pre-release reintegration percentage percent scores for effective employability skills is 85 percent. Basic independent living skills is 100. Banking credit skills 100 percent. Health, safety, and nutrition 88 percent. Community living was 100 percent. Human relations was 100 percent. And with the total average percentage being 93 percent.

Q. Thank you. There's a sentence under there – is there a pre-release reintegration program required?

A. It said no total score above 85 percent.

Q. Thank you. So it's safe to say that the people who evaluated Mr. Crane from the Department of Corrections, before releasing him, found that he scores a hundred percent in human relationships at the time of their evaluation, and they did not feel [81] it was necessary to put him through a reintegration program. Would you agree with that?

A. Well, as best I know. If that was what their recommendation was, yes. If I might.

Q. I'm sorry, sir. And I would like to reapproach the – again, hand you our Exhibit D and Page 10, there's a summary of needs, and I'm sorry but I've highlighted there. It has to do with mental health needs. If you would read the jury that portion.

A. He has mental health needs, subset is intensive mental health placement. It says "no". Mental health counseling, it says "yes".

Q. Thank you. Is it safe to say that the people who did a diagnosis on him before releasing him said that while they feel he needs mental health counseling, he does not need intensive mental health placement?

A. All that I can say is –

Q. Just "yes" or "no".

MR. TOTH: Object.

A. No. I have to qualify what I say. I'm sorry.

MR. DONHAM: Withdraw the question.

THE COURT: Very well.

Q. (By Mr. Donham) Dr. Hippe, in the DSM-IV, there's a section on the Antisocial Personality Disorder that talks about persons growing out of the effects of the [82] Antisocial Personality Disorder, and I realize that's not the language that you, as a trained psychologist, would use, but we're here to talk to the jury, and would you agree that the DSM-IV recognizes that as a person approaches their fourth decade of life, that on the average, people begin to lose this Antisocial Personality Disorder feature?

A. I'm very familiar with the literature on Antisocial Personality Disorder both pre-fourth decade and post-fourth decade, and there is some evidence and some suggestion that between the ages of 45 and 55 – I should say post-age 45, that there is some mellowing of some of the antisocial traits. It has, however, not been substantiated by research.

Q. On Page 648 of the DSM-IV – do you have your DSM-IV?

A. I don't have the large one. I have my summary.

Q. Page 648?

A. Yes.

Q. Under the heading "Course"?

A. Yes.

Q. The folks that put the DSM-IV together, I believe, say that Antisocial Personality Disorder "has a chronic course but may become less evident or remit as the individual grows older, particularly by the fourth decade of life"?

[83] A. Yes.

Q. . The first decade of life is when you're from zero to 10. The second would be from 10 to 20. 20 to 30 is your third. So by the time you get to 30, you're at your fourth decade. Would you agree with that? In other words, 30 to 40 is the fourth decade of life. It's the fourth. When the analysis in July of 1993 were done on Mr. Crane, he was about 31 years of age. He had just entered his fourth decade. He's now 37. You haven't interviewed him since 1993. Is it possible that the DSM-IV could be right, and that his Antisocial Personality Disorder could be on the decline?

A. Well, as I said before, I think particularly with respect to the Antisocial Personality Disorder, without treatment, it's extremely unlikely to decline.

Q. Does that DSM-IV paragraph specifically say that it declines if, and only if treatment is applied?

A. It says that the "Antisocial Personality Disorder has a chronic course" which is what I've spoken to "but may become less evident". Doesn't say "will become". Says it "may become". That's a real iffy probability or possibility. It's not even probability. They don't state it as saying there's a

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CIVIL ACTION

IN THE DISTRICT COURT FOR THE
TENTH JUDICIAL DISTRICT OF KANSAS
JOHNSON COUNTY, KANSAS

Case No. 97C16409
Appellate Ct. No. 98-82080-A

[Caption Omitted In Printing]

* * *

THE COURT: All right. Thank you.

Next is the charging instruction which is after Pattern Instruction 57.40.

MR. TOTH: Judge, the only thing we can say at the end of Section 2, we think it's probably appropriate to put in the language, "if not confined in a secure facility". I think that PIK instruction may have been thought up at the time when the statute did not have that language in there. The statute we're going under has that language.

THE COURT: I wondered about that.

MR. TOTH: It's been an issue in a case we've got presently on appeal when we didn't do that.

MR. DONHAM: Which one we talking about?

THE COURT: Burden of proof 57.40.

MR. DONHAM: This is the claim or the elements that must be proven?

THE COURT: Right.

MR. DONHAM: Well, we have an objection [112] to the language of Part 2. Judge, our objection is simply that I believe these PIK instructions have remained unchanged even though the *Kansas v. Hendricks* decision has come down. I think a reading of that opinion, it should be clear that the U.S. Supreme Court stated that they were deciding the issue, i.e. the constitutionality of the statute based solely upon the *Hendricks* case. I think they said that there our decision rests upon the fact pattern in *Hendricks* alone, and they mention in seven places whenever they talk about the mental abnormality, they always qualify that by the language of, for instance, on Page 2,081 of their opinion. To the extent that the civil commitment statutes we have considered set forth criteria relating to an individual's inability to control his dangerousness, the Kansas Act sets forth comparable criteria. I think, Judge, that any instruction to the jury that does not impose that level of volitional impairment avoids the holding of the *Kansas v. Hendricks* decision. That's the issue that we have raised throughout. On Page 279 in their opinion, they are talking accordingly, states have in certain narrow circumstances, provided for the forcible civil detainment of people who are unable to control their [113] behavior, and thereby pose a danger to the public health and safety. Over on Page 2,080 where they're saying "a finding of dangerousness standing alone is not enough", they talk about – they say that in addition to a finding of dangerousness, quote, we have sustained civil commitment statutes when they have coupled proof of dangerousness with the proof of some additional factor such as a mental illness or mental abnormality. And there's a bunch of citations. These added

statutory requirements serve to limit involuntary civil commitment to those who suffer from a volitional impairment rendering them dangerous beyond their control. The Kansas Act is mainly akin with these other civil commitment statutes. It requires a finding of future dangerousness, and then links that finding to the existence of a mental abnormality or personality disorder that makes it difficult, if not impossible, for the person to control his dangerous behavior. The precommitment requirement of a mental abnormality or personality disorder is consistent with the requirements of these other statutes that we have upheld in that it narrows the class a person's eligible for confinement to those who are unable to control their dangerousness. I think – any level, I [114] think, reducing the burden on the State so that they don't have to prove that Mr. Crane's volitional control is impaired to the degree he can't control his dangerous behavior circumvents the very reason we're here to determine whether he needs to be committed for mental abnormality.

THE COURT: Have you seen the definitions which are set out down in 57.41?

MR. DONHAM: You are talking about the proposed instruction, the one that's been modified?

THE COURT: Proposed instruction that sets out definitions, including "mental abnormality", "personality disorder", "volition" and "volitional".

MR. DONHAM: I have –

THE COURT: What else would you add to 57.40?

MR. DONHAM: What I add. I would restate Number 2 to read that the Respondent suffers – I'll take it right out of the U.S. Supreme Court decision. That the Respondent suffers from a mental abnormality or personality disorder that impairs his volitional control to the degree that he cannot control his dangerous behavior.

THE COURT: What's the State say here?

MR. TOTH: Well, Judge, that has a lot [115] to do with the Motion in Limine that I filed, and you want me to go ahead and make my argument now?

THE COURT: I suspect – I think it's a separate issue. I think it might be – there might be some room for argument here. Why don't you confine it to the instructions right now.

MR. TOTH: The instruction accurately states what the statute says, and the statute, as a whole, is what the Supreme Court addressed in the *Hendricks* case. It's my position that – and I do believe this because this has been an issue that has – we have been fighting with in this case ever since we filed it that Mr. Donham is selectively interpreting what the Supreme Court is saying in that case, and he just quoted to you the Supreme Court where they said the Kansas statute thinks – the finding to existence of mental abnormality or personality disorder which makes it difficult, not impossible for a person to control his behavior. Unable to control his behavior does not mean the same thing as volitional impairment. Unable to control behavior means can't control their behavior or won't control their behavior. Since we are following what the statute says in the instruction, and the

PIK set it out, I don't have any problem with it. I think it's [116] an appropriate way to deal with it.

MR. DONHAM: I would like to read a couple more passages from U.S. Supreme Court decision. This would be on Page 2081. They are talking about the individual is being unable to control their behavior, and the opinion says that, quote Hendricks even conceded that when he becomes stressed out, he cannot control the urge to molest children. This admitted lack of volitional control coupled with a prediction of future dangerousness adequately distinguishes *Hendricks* from other dangerous persons who are perhaps more properly dealt with exclusively through criminal proceedings, and on Page 2083, where Hendricks was apparently arguing about how long he might have to serve, the Court said this requirement, again, demonstrates that Kansas does not intend an individual committed pursuant to the act to remain confined any longer than he suffers from a mental abnormality rendering him unable to control his dangerousness. I understand there's always room for argument as to what U.S. Supreme Court meant. When they say something seven times, Judge, I don't think it's dicta.

MR. TOTH: Only to that I would say that I think, and there's nothing in the record to [117] indicate this, but I'm telling you, based on my past experience, pedophilia like Mr. Hendricks was suffering from is an Axis I mental abnormality. It is not a personality disorder. It is – pedophilia is something that affects a person's volitional control to the point where they cannot control it. This is a completely different situation, and the statute contemplates both Axis I mental abnormality and Axis II personality disorders.

THE COURT: I'm not sure that I'm in a position based on the record or my own knowledge to make that kind of distinction. I have read and reread the *Hendricks* opinion, highlighted the exact same portions that you have read into the record here today trying to figure out if the U.S. Supreme Court intended a limitation on the Kansas Sexual Predator Act as opposed to analyzing how the act was applied in Mr. Hendricks' specific case. And I think I understand and I appreciate Respondent's argument here, and there is certainly supporting language in the opinion. On the other hand, language that discusses this point doesn't consistently support Respondent's position. There is a considerable distinction between the concept of a mental abnormality which renders the Respondent unable to [118] control his behavior from a personality disorder that quote, prevents them from exercising adequate control over their behavior. I don't find the opinion in *Kansas v. Hendricks* to limit the applicability of the Kansas Act in the way Respondent urges. And so therefore, I would decline to add that additional language to the 57.40 elements instruction. Having said that, I do think it's appropriate to give the jury what definitions we can of "mental abnormality" and "personality disorder", and at least definition of "mental abnormality" goes into this same – approaches that same kind of analysis that there is lack of volition in the commission of sexually violent offenses. I do not see that definition as necessarily being applied to the personality disorder side of the statute, and I think that may be at the heart of the argument here, and I don't know how to resolve it except to follow the statute and the Pattern Instructions, and that issue may well have to be resolved on appeal by a

higher court, but I don't find in State v. – *State of Kansas v. Hendricks* the Supreme Court opinion direction that would lead me to think that we would leave out the personality disorder part of the statute. Does that make any sense?

[119] MR. DONHAM: I'm sorry. You lost me. Are you saying that there's a distinction between the use of the term "mental abnormality" or "personality disorder", whereas volitional control is applicable to mental abnormalities? It's not applicable to personality disorder?

THE COURT: I think that may be what the statute says.

MR. DONHAM: I think that was the issue, wasn't it, that *Hendricks* raised was that because they couldn't say he had a mental illness, he shouldn't have to go through the program that they could – very first thing Supreme Court said was, "we don't care what kind of title you hang on this mental infirmity, the State is free to pick what kind of mental infirmity they want". The important thing they reiterated over and over is that it's constitutional to involuntarily commit people civilly only in very limited circumstances. You can't commit them because they've been bad in the past. You have to commit them because they're crazy, they've got some real genuine mental disorder that affects their volitional control. Otherwise, it's just another commitment for prior bad acts. If all they can say about a guy is "well, he's got Antisocial Personality [120] Disorder, so we can lock him up because that doesn't require any kind of showing of a lack of volitional control", that's a life sentence based on the fact that he's been convicted before. Life.

THE COURT: Well, I don't mean to argue with you, but the other element of that is that he is "likely to engage in future predatory acts of sexual violence". That's what distinguishes the act hopefully from the garden variety felony. I think the language "if not confined in a secure facility" is statutory, and ought to be a part of Paragraph 2. Again, I think Respondent has made a thorough record on this point, and I acknowledge that it is very difficult, and I don't find the legal basis to make that change in the statute in this court.

The next instruction is simply that one that "The term 'sexually violent offense' includes Aggravated Sexual Battery".

MR. DONHAM: I'm sorry, Judge. For the record, we object to the charging instruction, which I'm sitting here kind of numb. I missed that. I want the record to reflect we object to the charging instruction simply saying that he is likely to engage in predatory acts, and that he's had a prior conviction. I do have one other objection. Without

* * *

[131] requests for additional instructions?

MR. TOTH: Not by the State.

MR. DONHAM: We have a couple. Since there's been a lot of testimony in this matter about acts which have led to criminal convictions, we would ask for four additional instructions to be given. One is the criminal PIK 54.01 "ordinarily a person intends all the usual consequences of his voluntary acts". Do you want me to read that into the record?

THE COURT: That's not necessary.

MR. DONHAM: Do you have a copy of it?

THE COURT: Yes.

MR. DONHAM: And the only change that I would ask to make is that since this PIK was written with the idea of a criminal jury trying to decide if the State met its burden, the language in the current instruction says "determining whether the state has met its burden to prove the required criminal intent of the Respondent". I think you probably just strike "required criminal".

THE COURT: I'm not sure what you would even address. Are you talking about addressing prior bad acts?

MR. DONHAM: This may be a carry-over to our original argument that if there is to be [132] involuntary commitment to some mental disorder, and not just a subsequent incarceration for criminal acts, then there has to be some – there has to exist something that has a life of its own outside and beyond just the criminal nature of an individual and is intent to commit a criminal act. I have a hard time vocalizing this, Judge, because I'm trying to work around your earlier decision in this, but if this is an involuntary commitment procedure for some mental problem that needs to be addressed, then the State must be arguing that that mental problem has caused him to behave in a way in the past that is not intentional. There's been a lot of evidence introduced in this case that his actions were intentional; to wit, he's done a number of things for which courts have found him guilty of criminal offenses, and we're asking for the definitions or the jury

instructions that address the fact that, for instance, in order for Respondent to be guilty of a crime, the State must prove that his conduct was intentional. Intentional means willful and purposeful and not accidental. There are about two or three – or two only I guess instructions that deal with that. One is 54.01 and one is 54.01a. So Judge, it's our position that if there's not [133] something there that is making Michael Crane – if there's something there that's making Michael Crane behave in a way that isn't intentional, it's a subject for involuntary commitment. If it's absent, then there's no need for involuntary commitment. If it exists, then the fact that he's acted intentionally in the past tends to offset the evidentiary value of the State's evidence about prior criminal acts.

THE COURT: I don't think it's appropriate to give either 54.01 or 54.01a in this case. In fact, I go so far as to say it would be error to give them those instructions. I understand, I believe, position of Respondent's understanding I've denied his request for some other instructions here, but I won't give them intent instructions in this case.

MR. DONHAM: Let me try this, Judge, if I may. If the Sexual Predator proceeding is to go like this, then aren't we really having a separate hearing that would be more properly called a"habitual criminal commitment act" –

(Reporter recharging machine.)

MR. DONHAM: In other words, this whole case, when we start eliminating absence of volitional [134] control because of a mental abnormality, and all the jury is left to find is that, and the person has been a mean

person repeatedly, he goes down to Larned. Antisocial Personality Disorder, you've heard testimony from Dr. Mabugat and Mr. Ken Eaves. Actually you've seen it in our motions. It was in their depositions. Dr. Mabugat said over 75 percent of the people in prison have Antisocial Personality Disorder. Ken Eaves thought it was at least 60 percent. If that's all the State has to prove, then this really isn't an involuntary commitment for the mentally ill. It's some sort of habitual criminal act in the skies where we come back after the person has finished his or her prison sentence, and simply have a couple of experts say they got Antisocial Personality Disorder, and we send them off to Larned.

THE COURT: I'm not here to defend the Kansas Sexual Predator Act. I'm trying to follow the law. I don't really see how those remarks go to proposed instructions on intent, and I decline to give them. I acknowledge your frustration with this. I'm not here to defend the act. I'm trying to do what the case law and the statute says, and I think applying those leads me to a fairly simple set of instructions as opposed to a complex one.

[135] MR. DONHAM: There's no treatment for that, Judge. How can you treat a person's prior history? That's all it's based on. Commitment proceeding is based upon the fact – unless what I'm getting back – I'm trying to reinforce my argument why. I think the Supreme Court said this has to be limited to those people who have a volitional control problem. If we don't limit it to the people with a volitional control problem, all we're doing is just remanding people back to some form of custody because there is no defense to the fact that a person's part of that 75 percent group of sex offenders in prison who

have an Antisocial Personality Disorder. I mean, and then the experts get on and say, "He's done it before, he'll do it again". What's to be repaired by mental health specialists if the proof is like everyone else, and you had priors? How do you make your priors go away? I understand, Judge. I'm being frustrated. It seems like a decision to open the application of this act to people who don't have a volitional control problem defeats the purpose of a Sexual Predator Act. Involuntary commitment for mental treatment.

THE COURT: Any other instructions we need to address?

[136] MR. DONHAM: Just, we would like our objections noted, Judge, as to the denial of giving intent instruction so we can argue to the jury that Mr. Crane knew full well what he was doing, and the Court found he acted willfully and intentionally at the time. There was one other – I don't know that matters now. It was a prior crimes instruction that I had photocopied for typing, and I'm not sure what Kathy typed here. It looks like she's modified it. It's the one that is the warning instruction for K.S.A. 60-455 evidence. PIK 52.06.

THE COURT: Right. I don't think it's appropriate to give 52.06. The evidence in such a case as this is relevant according to all expert opinion to his future behavior. It would be inappropriate to tell the jury that it can only be considered for purposes of proving Respondent's intent. Anything else on instructions?

MR. TOTH: No, sir.

MR. DONHAM: We would object to not giving that instruction.

THE COURT: Somewhere I had a motion from the State as to arguing.

MR. TOTH: I have another copy.

THE COURT: Shall we take that up?

[137] MR. TOTH: We have argued, I think, most of these – this issue within the last 45 minutes or so. I am just very concerned that the jury is going to be misled that in order to find somebody be a sexually violent predator that if they suffer from a personality disorder that it has to be the type of personality disorder that affects their volitional control. I do believe I've stated my arguments with respect to my interpretation of the Supreme Court opinion, and it's my understanding that the Court agrees with that position, and I only drafted that Motion in Limine based on statements Mr. Donham made in opening argument, so I'm concerned about it. I don't know what to do about it other than to bring it to the Court's attention. I would like some direction on that issue. It's obvious that we disagree on our interpretation of the statute, and I don't want there to be confusion about it.

THE COURT: You want to respond?

MR. DONHAM: I'm sorry that this issue is going to be decided now at jury instruction time now that we've made our opening and more or less made our approach to the case. It's been our good faith understanding all along that the U.S. Supreme Court was restricting the application of the act to a [138] limited number of

people. We disagree with Mr. Toth's impression and the Court's ruling. Doesn't leave us an awful lot of room, places to go in our closing. As an officer of the court, I can't go out there and argue to a jury something that's contrary to your holdings, I suppose. I think that's inappropriate on my part. I disagree with your holdings, but I will not – I can't go out there and argue something that you would instruct them is incorrect.

THE COURT: Well, I appreciate that response and those remarks. I don't think you can go out there and argue the law is something different from what I'm telling them it is in instructions. On the other hand, obviously Respondent's counsel is entitled to argue that these same points as applied to the facts of the case which are these past crimes weren't committed because of a personality disorder, they were committed because he's a bad guy and doesn't care how his actions affect people, that's clearly available for argument. That's different from saying that the law is something different than is set out in instructions. I don't want to overstate the limitation here. You can certainly obviously argue how the law as given in the [139] instructions applies to facts.

Anything else before argument?

MR. TOTH: No, sir.

THE COURT: You still want 45 minutes?

MR. DONHAM: Yes.

THE COURT: Okay. You want to split yours?

MR. TOTH: That's fine.

THE COURT: If you go over half, I'll take it off your back end. If you quit early, you can still have the full 22 and a half minutes in your final closing if you need it. What kind of warning do you want?

MR. TOTH: Just a minute.

THE COURT: Mr. Donham, two minute warning?

MR. DONHAM: That would be fine, Judge.

(Whereupon the proceedings continued in the courtroom, in the presence of the jury.)

* * *

IN THE DISTRICT COURT OF
JOHNSON COUNTY, KANSAS

IN THE MATTER OF THE CARE
AND TREATMENT OF MICHAEL
T. CRANE

CASE NO.
97C 16409
DIVISION
NO. 1

INSTRUCTIONS TO THE JURY

(Filed Aug. 13, 1998)

PETER V. RUDDICK
DISTRICT COURT JUDGE
DIVISION NO. 1

INSTRUCTION NO. 1

It is now my duty as Judge to instruct you in the law that applies in this case, and it is your duty as jurors to follow the law as I shall state it to you. You should construe each instruction in light of and in harmony with the other instructions, and you should apply these instructions as a whole to the evidence. The order in which the instructions are given has no significance and is no indication of their relative importance.

Insofar as the jury is concerned, you may consider as evidence whatever is admitted in the trial as part of the record, whether it be the testimony of witnesses in person or an article or document marked as an exhibit or other matters admitted, such as an admission, agreement, or stipulation.

At times during the trial, the Court ruled upon objections to the admission of certain things into evidence. Questions relating to the admissibility of evidence are solely questions of law for the Court and you must not concern yourselves with the reasons for its rulings. In your consideration of the case, you must draw no inferences from these rulings and you must consider only the evidence which is admitted by the Court.

Statements, arguments, and remarks of counsel are intended to help you in understanding the evidence and in applying the law, but they are not evidence, you should disregard any such utterance that has no basis in the evidence.

INSTRUCTION NO. 2

You must weigh and consider this case without favoritism for or prejudice against either party. You must not be influenced by anything not within the issues of the case. Sympathy should not enter into your deliberations.

Neither in these instruction nor in any ruling, action or remark that I have made during the course of the trial have I intended to interpose any opinion or suggestion as to how I would resolve any of the issues of this case.

It is for you to determine the weight and credit to be given the testimony of each witness. You have a right to use common knowledge and experience in regard to the matter about which a witness has testified.

INSTRUCTION NO. 3

Certain testimony has been given in this case by experts; that is, by persons who are specially qualified by experience or training and possess knowledge on matters not common to persons in general. The law permits such persons to give their opinions regarding such matters. The testimony of experts is to be considered like any other testimony and is to be tried by the same tests, and should receive such weight and credit as the jury deems it entitled to, when viewed in connection with all of the other facts and circumstances, and its weight and value are questions for the jury.

INSTRUCTION NO. 4

As to any alleged act of wrongdoing, the law places the burden upon the State to identify the respondent. The law does not require the respondent to prove he has been wrongly identified. In weighing the reliability of eyewitness identification testimony, you first should determine whether any of the following factors existed and, if so, the extent to which they would affect accuracy of identification by an eyewitness. Factors you may consider are:

1. The opportunity the witness had to observe. This includes any physical condition which could affect the ability of the witness to observe, the length of the time of observation, and any limitations on observation like an obstruction or poor lighting;

2. The emotional state of the witness at the time including that which might be caused by the use of a weapon or a threat of violence;

3. Whether the witness had observed the respondent on earlier occasions;

4. Whether a significant amount of time elapsed between the crime charged and any later identification;

5. Whether the witness ever failed to identify the respondent or made any inconsistent identification;

6. The degree of certainty demonstrated by the witness at the time of any identification of the accused; and

7. Whether there are any other circumstances that may have affected the accuracy of the eyewitness identification.

INSTRUCTION NO. 5

A person found to be a sexually violent predator shall be civilly committed for control, care and treatment in an appropriate facility until discharged according to law.

The nature and length of any civil commitment which may follow in the event you find the respondent is a sexually violent predator is of no concern to you as jurors.

INSTRUCTION NO. 6

The State has the burden to prove that respondent is a sexually violent predator. The test you must use is this: If you have a reasonable doubt as to the truth of any of the claims required to be proved by the State, you must find for the respondent. If you have no reasonable doubt

as to the truth of any of the claims required to be proved by the State, you should find for the State.

INSTRUCTION NO. 7

The State alleges the respondent is a sexually violent predator. The respondent denies the allegation.

To establish this charge, each of the following claims must be proved:

1. That the respondent has been convicted of Aggravated Sexual Battery, a sexually violent offense; and

2. That the respondent suffers from a mental abnormality or personality disorder which makes the respondent likely to engage in future predatory acts of sexual violence, if not confined in a secure facility.

INSTRUCTION NO. 8

The term "sexually violent offense" includes Aggravated Sexual Battery.

INSTRUCTION NO. 9

The following definitions of words and phrases are applicable in this proceeding:

"Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes a person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others.

"Predatory" means acts directed towards strangers or individuals with whom relationships have been established or promoted for the primary purpose of victimization.

"Personality disorder" means a condition recognized by the American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* (4th Ed. 1994) [DSM IV], and includes antisocial personality disorder.

"Likely" means more probable to occur than not to occur.

"Volition" means act of willing or exercise of the will.

"Volitional" means having or exercising the power of volition.

INSTRUCTION NO. 10

Once you retire to the jury room, you will be provided with these Instructions. All future communications to the Court should be in writing and delivered to the Bailiff or taken up in the Courtroom and recorded by the Court Reporter. You will find a call buzzer located by the door in the jury room should you need the Bailiff for any reason.

INSTRUCTION NO. 11

Upon retiring to the jury room, you shall first select one of your members as Presiding Juror. The Presiding Juror will preside over your deliberations and will speak for the jury in Court.

A verdict form with special question is provided for you in these Instructions. In order to find respondent to be a sexually violent predator all twelve of you must agree on it. The Presiding Juror will fill in the answer to the special question upon which you all agree and then sign the verdict form.

You will now listen to the arguments of counsel whose right it is to discuss the evidence and the law.

Your verdict must be founded entirely upon the evidence admitted and the law as given in these Instructions.

Dated this 12th day of August, 1998.

/s/ Peter V. Ruddick
PETER V. RUDDICK
DISTRICT COURT JUDGE
DIVISION NO. 1

VERDICT

We, the jury, make the following answer to the question submitted by the Court: Is the respondent, MICHAEL T. CRANE, a sexually violent predator?

X Yes ___ No

Dated this 13th day of August, 1998

/s/ Jeffrey C. Cook
Jeffrey C. Cook
Presiding Juror